United States Court of Appeals

for the Second Circuit

APPENDIX

76-6008, 6013, 1028

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 76-6008, 76-6013, 76-1028

AMREP CORPORATION,

Appellant,

—v.—

FEDERAL TRADE COMMISSION,

Appellee.

UNITED STATES COURT OF APPEALS
FILED
FEB 5 - 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES OF AMERICA,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORP., HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, and DANIEL FRIEDMAN,

Defendants.

APPENDIX

PROSKAUER ROSE GOETZ & MENDELSOHN
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PAGINATION AS IN ORIGINAL COPY

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AMREP CORPORATION -v- FEDERAL TRADE COMMISSION

75 Civ. 4013

75 CIV. 4

DATE		PROCEEDINGS	Date Order Judgment
08-13-75	1	Filed complaint & issued summons.	
08-21-75	2	Filed Pltffs. Notice of Motion for an order for Preliminary injunction granting a Stay of Proceeding presently pending before the Federal Trade Commission. Ret. 9-5-75.	
08-21-75	3	Filed Pltffs. Memorandum of Law.	
08-29-75	4	Filed Defts Notice of Motion for order dismissing complaint. Ret. 9-11-75	USATTY
08-29-75	5	Filed Defts. Memorandum of Law.	
9-22-75	6	Filed summons & marshalls return, served the following Federal Trade Commission by certified mail receipt # 285172 on 8-19-75 U.S. Atty S.D.N.Y. on 8-19-75 Atty Gen DEpt of Justice Wash. D.C. 20530 by certified mail receipt # 285171 on 9-1	
Sep15-75	7	Filed Pltffs memo of law in opposition to defts motion to dismiss etc, as indicated.	
Sep25-75	8	Filed defts Federal Trade Commission's reply memorandum.	
11-7-75	9	FILED MEMO ENDO SED ON MOTION FILED 8-29-75: The motion of the deft FTC to dismiss the is hereby granted on the ground that the action is moot. Pierce, J. M/N	
11-7-75	10	Filed memo endorsed on motion filed 8-21-75. The motion within is hereby denied as moot. Pierce, J. M/N	
Jan5-75	11	Filed Federal Trade Commision's memorandum in opposition to AMREP Corp's application for a temporary restraining order, etc, as indicated.	
Dec31-75	12	Filed Notice that Pltff Amrep Corp. appeals to the U.S.C.A.P. from the orders dated Nov 3, 1975 and entered in this action on Nov 7, 1975, etc, as indicated. Mailed Notices to U.S. Atty. - Asst. U.S. Atty. Secretry Federal Trade Commission Atty Genl of the U.S. Office of the General Counsel, Federal Trade Commission, Washington, D. C.	
Jan7-76	13	Filed Affidavit of Pltffs Atty. Steven S. Miller, as indicated.	
1-9-76	14	Filed Memo. Erd. on motion dtd. 1-9-76. For the reasons stated on the record 1-5-76, the court declines to sign the order to show cause presented by Amrep & nthe application for an order pursuant to Rule 60(b) FRCP is denied. Pierce J. (mailed notice)	
1-9-76	14	Filed Order to Shww Cause Unsigned.	
1-14-76	15	Filed Bond in the amount of $250 Per costs on appeal by the Aetna XCasualty & Surety Co. Hartford Conn. 06115.	
1-14-76	16	Filed Pltffs. Notice of Appeal from the order entered on 1-9-76. (mailed notice)	
1-14-76		Filed plaintiff's Memorandum of law in support of motion for a stay of Fed. Commissi proceedings.	
1-15-76	17	Filed Notice that the record on appeal has been certified and transmitted to the U.S.C.A.P. this date.	

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Assigned Trial MAGISTRATE 0835 Disp./Sentence

Minor Offense ☐ or Misdemeanor ☐

0208 District 1 Office

• U. S. vs. AMREP CORPORATION defendant

Day 28 | 10 | 75 | 1023

No. of Defdnts 10 *

CHARGES

~~16:~~1341 Mail fraud. 1-70

15:1703 Interstate Land Sales Act. 71-80

MAGR. CASE NO.

BAIL • RELI

☐ Denied ☐ Person ☐ Unsec. ☐ Condition

AMT Set (000) $ ____

date ____ ☐ Bail Not Made ☐ Bail Status Changed (See Docket)

TORNEYS

Patricia M. Hynes, AUSA
(212) 791-0049

ERVALS ATES

ARREST ☐ or U.S. Custody Began on Above Charges ☐ Prosecution Deferred

INDICTMENT ☐ High Risk Defn. & Date Design'd ☐ Information 10-28-75 ☐ Waived ☐ Superseding ☐ Indict/Info ☐

ARRAIGNMENT 1st Plea ____ Final Plea ____ Trial Set For ____ ☐ Not Guilty ☐ Nolo ☐ Guilty ☐ Not Guilty ☐ Nolo ☐ Guilty

TRIAL Voir Dire ☐ Trial Began ☐ J ☐ N J Trial Ended ____

SENT Disposition ____ ☐ Convicted ☐ On ☐ On ☐ Acquitted ☐ Off ☐ Dismissed: ☐ WC ☐ Nolled/Discontinu

STRATE

		'DATE	INITIAL/No.
Search Warrant	Issued		
	Return		
Summons	Issued		
	Served		
Arrest Warrant			
COMPLAINT ▶			
OFFENSE (In Complaint)			

INITIAL APPEARANCE INITIAL/No.

PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled ____ Date Held ____ ☐ Waived ☐ Not Waived ☐ Intervening Indictment

Tape No. INITIAL/No.

OUTCOME

☐ Dismissed ☐ Held for District GJ BOND ☐ Exo ☐ To Dist

☐ Held to Answer to U. S. District Co

AT:

Magistrate's Initials ▶

* Show last names and suffix numbers of other defendants on same indictment/information

Rio Rancho-2;ATC-3;Friedman-4;Carity-5;Blum-6;Hoffman-7;Oberman-8; Friend-9;D.Friedman-10

DATE	PROCEEDINGS	V. Excludable (a)	V. Excludable (b)
10-28-75	Filed indictment.		
11-10-75	Pleads not guilty thru atty. Stanley Arkin(authorized to enter plea on behalf of the corporation. Case assigned to Judge Metzner for all purposes. Weinfeld,J. All passports in the possession of the above named defts. to be surrender to Patricia Hynes, AUSA. As all defendants bail limits to include continental U.S.		
1-6-76	Filed defts. affdt. and OSC with a stay--ORDERED that pltf.(govt.) show cuase on Jan. 9,1976 at 10am in Rm.619 why an order should not be entered enjoining all proceedings in the matter presently pending before the FTC(their #9018) until the conclusion of the trial herein;ORDERED that all discovery requirements at the FTC presently scheduled for Jan. 9,1976 is STAYED pending the determina of this motion and ORDERED that service be made by noon,Jan 6,1976 Metzner,J.		

A (over)

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC Section(s) "SPEEDY TRIAL ACT"

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELA (a)	(b)	(c)
1-6-76	Filed defts. memoranudm of law in support of motion to stay FTC proceedings.			
-6-76	Filed defts. affdt. of Steven Miller.			
1-6-76	Filed FTC memorandum of law in opposition to motion for stay.			
1-6-76	Filed FTC memorandum of law in oppostion to motion for prel. injunct. and to dismiss.			
-6-76	Filed defts. exhibits in support of motion to stay FTC proceedings.			
1-7-76	Filed transcript of record of proceedings dated Nov. 18,1975.			
1-9-76	Filed defts. reply memorandum in support of defts. motin for stay of FTC proceedings.			
1-9-76	Filed defts. supplementaty exhibits in suuport of motion to stay FTC proceedings			
1-15-76	Filed OPINION # 43733--deft. moves for a stay of all proceedings presently pending against it before the Federal Trade Commision (FTC) As stated,the defts. must file all pre-trial motions in the criminal proceedings within 10 days from now.The criminal trial is to start on Oct. 5,1976. Therefore, I direct that the Commission proceedings may continue with the presentation of the govts. case in chief xxhxkkxngk through July 30,1976. All proceedings thereafter are stayed until one month after the entry of the jury's verdict in the criminal trial. The commission,if it is o f the opinion that it will be prejudiced by an adj.,can apply for a preliminary injunction against said deft. to cease whatever proceedings or practices the Commission seeksto enjoin in the proceedings,etc. as indicated. So ordered, Metzner,J. m/n			
01-20-76	Filed defts. xxx notice of appeal to the USCA fromthe order entered on Jan. 15,1976 xxxxxx denying in part motionof deft. to enjoin the FTC proceedings until the conclusion of the trial herein,Copies mailed to US Atty's.Office;FTC-Wash,DC; Mark Arison 300 Madison Ave NYC 10017; Robert Kasanof 460 Park Ave,NYC;Jack Hoffinger 10 E.53 St NYC,Guy Quinlan of 200 Park Ave,NYC 10017;John Sprizzo of 100 Wall St,NYC 10005 and to Amrep Corp. at 16 W.61St,NYC.			
1-22-76	Filed Affidavit of Charles A. Tobin, Secty. of F.T.C.(received in Courtroom 1-9-7			
1-22-76	Filed transcript of record of proceedings dtd: Jan. 6-76			
1-22-76	Filed transcript of record of proceedings dtd: Jan. 9-76			

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

By _____
Deputy Clerk

B

(a) Interval (per Section II)	(b) Start Date / End Date	(c) Ltr Code	(d) Tr

UNITED STATES OF AMERICA

BEFORE

FEDERAL TRADE COMMISSION

DOCKET NO. 9018

IN THE MATTER OF:

AMREP CORPORATION

COMPLAINT

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation.	DOCKET NO. 9018

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that AMREP Corporation, a corporation, hereinafter sometimes referred to as respondent, by itself and through its wholly-owned subsidiaries, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH ONE: Respondent AMREP Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Oklahoma, with its principal office and place of business located at 16 West 61st Street, New York, New York.

PARAGRAPH TWO: Respondent AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of its land sales and housing sales subsidiaries.

PARAGRAPH THREE: Respondent AMREP Corporation is now, and for some time past has been, engaged, by itself and through its wholly-owned subsidiaries, in the business of acquiring undeveloped land, subdividing said land into lots, and advertising, offering for sale, and selling said lots to the public. Among the subdivisions in which lots have been and are being offered for sale by respondent are the subdivisions known as Rio Rancho Estates, New Mexico; Silver Springs Shores, Florida; Oakmont Shores, Missouri; and Eldorado at Santa Fe, New Mexico. The acreage of each of these subdivisions is substantial. Such subdivisions are the property of wholly-owned subsidiaries of AMREP Corporation. Land sales are generally effected through sales offices operated by wholly-owned subsidiaries which are located in approximately 20 states.

PARAGRAPH FOUR: Respondent sells the lots in its subdivisions to purchasers by use of standard form contracts, entitled "Reservation and Purchase Agreements" (hereinafter sometimes referred to in this

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Complaint as a "contract,") whereby the purchaser pays monthly installments over terms ranging from 5 to 8 years. According to the provisions of the contract, title to the lot remains in respondent until final payment is made, at which time title to the lot is to pass to the purchaser. Purchasers do not, during the term of the contract, have any rights of ownership and cannot use the lot. Purchasers pay interest to respondent during the contract term on the unpaid balance owing on the contract.

PARAGRAPH FIVE: In the course and conduct of its business as aforesaid, respondent now causes, and for some time past has caused, its advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mails and other interstate instrumentalities from its various places of business to agents, representatives, employees, customers, and prospective customers in various other states of the United States. Respondent now maintains and operates, and for some time past has maintained and operated, places of business and has made substantial sales to purchasers in various states of the United States. Respondent has been, and is now, engaged in the practice of conducting tours for prospective purchasers and purchasers of land at its subdivisions. Such tours include the transportation of prospective purchasers and purchasers from various states in the United States to subdivisions in Florida and New Mexico. Such tours, and the sales of land and houses made pursuant thereto, constitute a significant amount of respondent's business. Respondent maintains and at all times mentioned herein has maintained, a substantial course of trade in undeveloped land and houses in or affecting commerce, as defined in the Federal Trade Commission Act.

PARAGRAPH SIX: In the further course and conduct of the aforesaid business, and at all times mentioned herein, respondent has been, and is now, in substantial competition, in or affecting commerce, with corporations, firms and individuals in the sale of undeveloped land and houses.

PARAGRAPH SEVEN: In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials through the mails and in person to members of the public, and makes sales presentations by means of oral and written statements, slides and movies. By and through such means, respondent has made and is making, various statements and representations, directly or by implication, concerning the size, diversity, and assets of AMREP Corporation, the backing of respondent's land sales business by such assets, and the good reputation and integrity of the AMREP Corporation.

PARAGRAPH EIGHT: By and through the use of such representations and statements, respondent AMREP Corporation has used and is

using its name and the prestige and diversification of its holdings for the purpose of selling its subsidiaries' land and houses and deriving pecuniary benefits therefrom.

PARAGRAPH NINE: In the further course and conduct of the aforesaid business, respondent has made and is making various written and oral statements to the public concerning the purpose of contacting members of the public and inviting them to dinner parties or other gatherings, or offering goods and services free or at low cost. By and through such statements respondent has represented and is representing, directly or by implication, that the purpose in inviting members of the public to dinner parties or other gatherings, or in offering goods or services free or at low cost, is to inform people of the land situation in general, or to accomplish some purpose other than attempting to get invitees to sign contracts for undeveloped land.

PARAGRAPH TEN: In truth and in fact, respondent's purpose in contacting members of the public, or holding dinner parties or other gatherings, or in offering goods or services free or at low cost, is to induce the signing of contracts for the purchase of respondent's land. Therefore, the acts and practices alleged in PARAGRAPH NINE herein are deceptive and unfair.

PARAGRAPH ELEVEN: In the further course and conduct of the aforesaid business, respondent disseminates advertisements in various publications of general circulation, distributes promotional materials to members of the public, and makes sales presentations by means of oral and written statements, movies, and slides. By and through such means, respondent has made and is making various statements and representations concerning the supply of and demand for land; the liquidity or marketability of land; land prices and values; land as an investment; personal financial security; the stock market, banks and insurance; population growth and movement; the size and diversity of respondent's assets; and various options or financial protections afforded purchasers of respondent's land, including but not limited to purchasers' rights to cancel the contract within six month should they visit the property. By and through such statements and representations respondent has represented and is representing, directly or by implication, that the lots which respondent is offering for sale are an excellent investment for the price at which respondent is offering them for sale, that significant monetary gain can be achieved by purchasing such lots, and that there is little or no financial risk involved in the purchase of said lots at said prices.

PARAGRAPH TWELVE: In truth and in fact, in a significant number of instances, lots which respondent has offered and is offering for sale, at the prices at which respondent has offered and is offering them for sale, have been and are poor investments involving a substantial amount of financial risk to purchasers. Therefore, the acts and practices alleged in PARAGRAPH ELEVEN herein are deceptive and unfair.

PARAGRAPH THIRTEEN: In the further course and conduct of the aforesaid business, respondent, through statements in advertisements, booklets, pamphlets, letters, movies, slides, and oral presentations has represented and is representing, directly or by implication, that the resale of a lot purchased from respondent is not difficult.

PARAGRAPH FOURTEEN: In truth and in fact, there is virtually no resale market for lots purchased at respondent's subdivisions. Therefore the representations, acts, or practices alleged in PARAGRAPH THIRTEEN herein are deceptive and unfair.

PARAGRAPH FIFTEEN: In the further course and conduct of the aforesaid business, respondent has offered and is offering for sale lots in its subdivisions without disclosing to prospective purchasers that the lots being offered are, at the price at which respondent is offering them, a risky investment in that, inter alia, the future value of the lots being offered is uncertain and the purchaser probably will be unable to sell his lot, or his interest in it under the contract, at or above the purchase price. Respondent therefore has failed to disclose material characteristics of its lots which, if known to customers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. The failure to disclose such information is a deceptive and unfair act or practice.

PARAGRAPH SIXTEEN: In the further course and conduct of the aforesaid business respondent,. through oral statements and periodic increases in prices of lots, represents, directly or by implication, that the market value of the lots at its subdivisions is rising.

PARAGRAPH SEVENTEEN: In truth and in fact, the market value of the land has not been rising. Therefore, the acts or practices alleged in PARAGRAPH SIXTEEN herein are deceptive and unfair.

PARARAPH EIGHTEEN: In the further course and conduct of the aforesaid business, respondent has, with respect to its various subdivisions, made representations through advertising, promotional materials and oral statements that the growth of land values at its subdivisions has corresponded and still corresponds to the growth of land values in certain other geographical areas. Through the use of such advertisements and oral statements, respondent has represented and is representing, directly or by implication, that lot values at its subdivisions increase at a rate comparable to those of the certain other geographical areas.

PARAGRAPH NINETEEN: In truth and in fact, lot values at respondent's subdivisions do not bear any significant relation to land values in these other geographical areas and do not increase at a rate similar thereto. Therefore the acts and practices described in PARAGRAPH EIGHTEEN herein are deceptive and unfair.

PARAGRAPH TWENTY: In the further course and conduct of the aforesaid business, respondent has, with regard to the subdivision Rio Rancho Estates, used advertisements, pamphlets, oral statements, movies and slides to give prospective purchasers the impression that the only direction in which the city of Albuquerque, New Mexico can expand is toward Rio Rancho Estates. Through the use of such representations, respondent has represented and is representing, directly or by implication, that the value of undeveloped land in Rio Rancho Estates will increase because of such an expansion.

PARAGRAPH TWENTY-ONE: In truth and in fact, Rio Rancho Estates is not the only direction toward which the city of Albuquerque can grow. Therefore the acts and practices set forth in PARAGRAPH TWENTY herein are deceptive and unfair.

PARAGRAPH TWENTY-TWO: In the further course and conduct of the aforesaid business, respondent has made and is making various oral and written statements and representations to purchasers under contract with respondent by which respondent has represented and is representing, directly or by implication, that the value of lots has increased significantly since the time of purchase from respondent.

PARAGRAPH TWENTY-THREE: In truth and in fact, the value of lots has not increased significantly since the purchase from respondent. Therefore, the acts and practices alleged in PARAGRAPH TWENTY-TWO herein are deceptive and unfair.

PARAGRAPH TWENTY-FOUR: In the further course and conduct of the aforesaid business, respondent has made and is making oral statements and representations to members of the public concerning the present and future development of its subdivisions. By and through such statements and representations, respondent has represented and is representing, directly or by implication, that its subdivisions will, in the near future, be developed at least to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PARAGRAPH TWENTY-FIVE: In truth and in fact, respondent's subdivisions will not, in the near future, be developed to the extent that all or most lots will be useable as homesites, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities. Therefore, the acts and practices alleged in PARAGRAPH TWENTY-FOUR herein are deceptive and unfair.

PARAGRAPH TWENTY-SIX: In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that the particular lot a purchaser buys

will, in the near future, or at some specifically stated time, be useable as a homesite, with potable water, septic tanks or central sewage, electricity and telephone service available without extraordinary charges for hook-up to said utilities.

PARAGRAPH TWENTY-SEVEN: In truth and in fact, many purchasers bought lots which were not useable as homesites, because potable water, septic tanks or central sewage, electricity and telephone service were not made available without extraordinary charges for hook-up to said utilities within the near future or such specifically stated time. Therefore, the representations alleged in PARAGRAPH TWENTY-SIX constitute deceptive and unfair acts or practices.

PARAGRAPH TWENTY-EIGHT: In the further course and conduct of the aforesaid business, respondent has represented and is representing, directly or by implication, that land in the subdivision being offered would soon be unavailable, and therefore that prospective purchasers must purchase lots immediately or risk being unable to do so.

PARAGRAPH TWENTY-NINE: In truth and in fact, respondent's land has not been and is not selling at such a rate that prospective purchasers could not wait a substantial period of time and still be able to obtain land in the subdivision being offered. Therefore the acts and practices alleged in PARAGRAPH TWENTY-EIGHT herein are deceptive and unfair.

PARAGRAPH THIRTY: In the further course and conduct of the aforesaid business, respondent has made and is making oral statements concerning the location of the lots offered for sale. By and through such statements, respondent has represented and is representing, directly or by implication, that prospective purchasers must purchase immediately to ensure that they can obtain what respondent's employees refer to as "desirable locations."

PARAGRAPH THIRTY-ONE: In truth and in fact, purchasers could wait a substantial amount of time and still have a substantial choice of lots with locations as "desirable" as those offered at the time the representations alleged in PARAGRAPH THIRTY are made. Therefore, the acts and practices alleged in PARAGRAPH THIRTY herein are deceptive and unfair.

PARAGRAPH THIRTY-TWO: In the further course and conduct of the aforesaid business, respondent, through advertisements and oral statements, has represented and is now representing, directly or by implication, that the Rio Rancho Estates area is attracting a substantial amount of new industry, and that purchasers who decide to move there will not have difficulty obtaining jobs similar in nature and remuneration to those held in their former place of residence.

PARAGRAPH THIRTY-THREE: In truth and in fact, jobs for new residents of Rio Rancho Estates are difficult to obtain unless the new resident decides to take either a substantial reduction in salary or a substantially different job, or both. Therefore the use of the advertisements and oral statements alleged in PARAGRAPH THIRTY-TWO herein constitutes deceptive and unfair acts or practices.

PARAGRAPH THIRTY-FOUR: In the further course and conduct of the aforesaid business, respondent has, through oral statements and other means, represented that certain facilities or improvements in Rio Rancho Estates are presently available, or will be available in the near future.

PARAGRAPH THIRTY-FIVE: In truth and in fact, the facilities or improvements referred to in PARAGRAPH THIRTY-FOUR herein are not now and will not soon be made available at Rio Rancho Estates. Therefore the acts and practices alleged in PARAGRAPH THIRTY-FOUR herein are deceptive and unfair.

PARAGRAPH THIRTY-SIX: Respondent's land sales contracts contain a declaration by the purchaser that the purchaser understands that no agent or representative of the seller shall have any authority whatsoever to make any other representation on behalf of the seller aside from what is stated in the written contract.

PARAGRAPH THIRTY-SEVEN: Use by respondent of the aforesaid declaration is an unfair and deceptive act or practice because respondent and its employees make representations, through advertisements and publications of general circulation, in promotional materials, and in sales presentations by means of oral statements, slides and movies, which differ in material respects from, or which obscure, the rights and obligations of purchasers and respondent under said contracts.

PARAGRAPH THIRTY-EIGHT: In the further course and conduct of the aforesaid business, respondent has made and is making various oral statements in sales presentations concerning the import or significance of signing the contract for the purchase of respondent's land. By and through such statements, respondent (1) has represented and is representing, directly or by implication, that by signing a contract the purchaser is not entering into a binding obligation to purchase land, or (2) respondent has obscured and is obscuring the legal or practical significance of signing a contract.

PARAGRAPH THIRTY-NINE: In truth and in fact, a person signing a contract which is later signed by respondent, has thereupon entered into a binding obligation to purchase land. Therefore the acts and practices alleged in PARAGRAPH THIRTY-EIGHT are deceptive and unfair.

PARAGRAPH FORTY: In the further course and conduct of the aforesaid business, respondent has used and is using in its standard form contracts a provision whereby defaulting purchasers forfeit all payments previously made to respondent under the contract. Respondent has received payments from purchasers who subsequently defaulted on their contracts and has failed to offer to refund or has refused to refund to such purchasers those amounts of the purchasers' total payments which exceed respondent's reasonable damages caused by the defaults. Respondent's continued retention of said amounts constitutes an unfair act or practice and/or an unfair method of competition.

PARAGRAPH FORTY-ONE: The use by respondent of the aforesaid contract provisions as described in PARAGRAPH FORTY constitutes an unfair act or practice.

PARAGRAPH FORTY-TWO: Respondent's contracts contain a six-month refund provision according to the terms of which the purchasers must visit the lot in order to obtain a refund of all monies paid under the contract. Respondent conducts tours to its subdivisions for purchasers ostensibly so that purchasers might examine their land and decide whether or not to request cancellation of the contract. However, respondent actually uses these tours to sell purchasers more land, and to discourage such purchasers from exercising their cancellation privilege.

PARAGRAPH FORTY-THREE: The use of the tours mentioned in PARAGRAPH FORTY-TWO to vitiate the effect of the six-month refund provision constitutes an unfair act or practice.

PARAGRAPH FORTY-FOUR: In the further course and conduct of the aforesaid business, respondent has utilized and continues to utilize a provision in its standard form contracts giving purchasers of land the right to exchange parcels of undeveloped land for parcels of comparable value in a developed area. This exchange privilege has also been explained in sales presentations to prospective purchasers. Through the use of this provision and the explanations in sales presentations, respondent has represented and now represents, directly or by implication, that those who are ready to build homes on respondent's property will be able to get a lot of equal size in a developed area without paying additional cash.

PARAGRAPH FORTY-FIVE: However, when purchasers wish to exchange for a lot in a developed area, respondent uses various means and devices to encourage or coerce purchasers to exchange their lots for smaller building lots and, moreover, to pay extra money to respondent. Among the devices used by respondent to discourage exchanges for equal size lots with no additional cash being paid are representations that such lots are less desirable than others because they require septic tanks, have overhead as opposed to underground utility lines, have no public transportation available, and because financing for homes to be built on them is more difficult to obtain. Re-

spondent does not disclose to purchasers that such practices will be used to discourage them from receiving a lot of equal size in a developed area without paying additional cash, nor does respondent disclose that a substantial number of purchasers do in fact pay extra money and receive a smaller lot in return. Respondent therefore has failed to disclose material facts which, if known to certain purchasers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive or unfair practice.

PARAGRAPH FORTY-SIX: In the further course and conduct of the aforesaid business, respondent has presented and is presenting purchasers with a contract, a property report required to be provided to the purchaser by federal or state law, and in some instances additional lengthy or detailed documents. These documents contain information and provisions which could affect the decision of certain consumers on whether to sign a contract for the purchase of respondent's land. Respondent frequently has made and is making available the aforesaid documents at dinner parties or other gatherings sponsored by respondent in circumstances where it is likely that many purchasers will not read such documents at all because they are insufficiently aware of their utility or significance, or it is likely that many purchasers will not read such documents carefully, completely or with full comprehension of their meaning and import. In many instances respondent has withheld reports required to be provided to the purchaser by state or federal law until after an agreement is signed, which practice is in violation of federal or state laws. The soliciting or obtaining under such circumstances of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, is a deceptive and unfair act or practice.

PARAGRAPH FORTY-SEVEN: In the further course and conduct of the aforesaid business, respondent has utilized and is utilizing contract provisions which are not understandable to many consumers or cannot be evaluated by many consumers. Respondent has made and is making the contract available to prospective purchasers, and solicits and obtains signatures to the contract from purchasers, in circumstances where the purchaser does not have the opportunity to seek assistance of counsel or other professional advice to aid in understanding said provisions. Respondent has discouraged purchasers from obtaining assistance of counsel or other professional advice in order to understand said provisions. The soliciting or obtaining of an agreement to purchase respondent's land, involving a substantial financial commitment by the purchaser, when the purchaser has not had an opportunity to seek assistance of counsel or other professional advice, together with the discouragement of purchasers who wish to seek assistance of counsel before entering into such an agreement, constitute unfair acts or practices.

PARAGRAPH FORTY-EIGHT: In the further course and conduct of the aforesaid business, respondent has utilized artificial props in

the production of motion pictures promoting the sale of land in its subdivisions. Typical of the motion pictures in which such props were used, was one for which grass was sprayed green and pine cones were hung from trees in order to make the area appear more appealing.

PARAGRAPH FORTY-NINE: The promotional motion pictures referred to in Paragraph FORTY-EIGHT purport to accurately and truthfully depict or describe the appearance or habitability of respondent's land. However, by and through the use of the artificial means alleged in PARAGRAPH FORTY-EIGHT, said promotional motion pictures falsely represent said appearance or habitability. Therefore, said promotional motion pictures were and are unfair or deceptive.

PARAGRAPH FIFTY: Respondent maintains a number of wholly-owned subsidiaries which operate in various states and whose function is to sell vacant land in respondent's subdivisions. Many of such subsidiaries are given names consisting solely of initials. Prospective purchasers of land are often not informed that such sales companies are wholly-owned subsidiaries of respondent AMREP Corporation. Prospective purchasers have thus been and are led to believe that an independent sales company is promoting the purchase of land in respondent's subdivisions. Respondents therefore have failed to disclose material facts which, if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Such failure to disclose is a deceptive and unfair act or practice.

PARAGRAPH FIFTY-ONE: In the further course and conduct of the aforesaid business, respondent represents, directly or by implication, that financing for homes to be built in respondent's developments will be easily obtained.

PARAGRAPH FIFTY-TWO: In truth and in fact, certain purchasers experience problems in obtaining home financing. Therefore, the representations alleged in PARAGRAPH FIFTY-ONE constitute unfair and deceptive acts or practices.

PARAGRAPH FIFTY-THREE: The problems in obtaining home financing are material facts which if known to certain consumers, would be likely to affect their consideration of whether or not to purchase a lot from respondent. Therefore, the failure to disclose such information is a deceptive and unfair act or practice.

PARAGRAPH FIFTY-FOUR: In the further course and conduct of the aforesaid business respondent has induced and is inducing members of the public through deceptive and unfair acts and practices, to pay to it, in advance of passage of title or the obtaining of any rights of enjoyment or possession, substantial sums of money towards the

purchase of lots in respondent's developments which are of little or no use or value to the purchasers as investments or for any other purpose. Respondent has received and is receiving the said sums, and has failed to offer to refund or has refused to refund said sums to purchasers. Respondent's continued retention of the sums obtained as alleged in this PARAGRAPH constitutes an unfair act or practice and/or an unfair method of competition.

PARAGRAPH FIFTY-FIVE: The use by respondent of the aforementioned unfair and deceptive statements, representations, and practices has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements were, and are, true, and to cause the purchase of substantial numbers of respondent's lots because of said mistaken and erroneous belief.

PARAGRAPH FIFTY-SIX: The aforementioned acts and practices, as herein alleged, were and are all to the prejudice and injury of the public and respondent's competitors and constituted, and now constitute, unfair methods of competition in or affecting commerce and unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 11th day of March, 1975, issues its complaint against said respondent.

NOTICE

Notice is hereby given to each of the respondents hereinbefore named that the 23rd day of April A.D. 19 75, at 10 o'clock is hereby fixed as the time and Federal Trade Commission Offices, 1101 Building, 11th & Pennsylvania Avenue, N.W., Washington, D.C. 20580 as the place when and where a hearing will be had before a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the thirtieth (30th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material allegations to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint will provide a record basis on which the hearing examiner shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer you may, however, reserve the right to submit proposed findings and conclusions and the right to appeal the initial decision to the Commission under Section 3.52 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the hearing examiner, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order.

ORDER

The following is the form of Order which the Commission has reason to believe should issue if the facts are found as alleged in the Complaint. In addition, the Commission has reason to believe that it may also be appropriate to include order provisions relating to the inclusion of terms in future contracts and modification of existing contract terms which would limit liability of a purchaser for any default by him under the contract. Specific provisions ordered by the Commission will be based upon the record facts developed in adjudicative proceedings in this matter.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the Complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other person, partnerships, or corporations, in the form of restitution and refunds for past, present, and future consumers or such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act, as amended. The Commission will determine whether to apply to a court for such relief on the basis of the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

As used in this Order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting, directly, or indirectly, and by any manner or means.

I

IT IS ORDERED that respondent AMREP Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, either orally or in writing:

   a. That the vacant lots which respondent is offering for sale constitute a good or excellent investment, or that there is little or no financial risk involved in the purchase of respondent's lots.

   b. That the resale of a vacant lot purchased from respondent is not difficult.

   c. That the value of land at its subdivisions is rising or will rise in the future.

   d. That the prices of respondent's lots periodically rise or that prices are increasing, have increased, or will increase, without clearly and conspicuously disclosing at the same time, and by the same medium by which the price increases are communicated, that

the price increases do not in any way relate to the value of the land, and that the value of land to purchasers does not appreciate proportionately with the price rises.

e. That the growth in land values or potential growth in land values at respondent's subdivisions corresponds to or will correspond to the growth in land values of any other locality, or in any way comparing land values or potential growth in land values at respondent's subdivisions to land values or potential growth in land values in any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, states and regions.

f. That the purchase of a lot in one of respondent's subdivisions is a way to achieve financial security, to deal with inflation, or to become wealthy.

g. That real estate is a good or safe investment, or the purchase of a lot in one of respondent's subdivisions is a good or safe investment.

h. That the value of, or demand for, any land, including lots being offered for sale or previously sold by respondent, has increased, or will or may increase, or that purchasers have made, or will or may in the future make, a profit by reason of having purchased respondent's land.

i. That the only direction in which the City of Albuquerque, New Mexico can expand is toward Rio Rancho Estates, or that it is most likely that the City of Albuquerque, New Mexico will expand in the direction of Rio Rancho Estates.

j. To purchasers under contract with respondent, that the value of lots purchased has increased significantly since the time of purchase.

k. That any of its subdivisions will be developed in its entirety, without specifying the date certain by which such development will take place.

l. That land in respondent's subdivisions will soon be unavailable or that land in any particular subdivision of respondent will soon be unavailable.

m. That prospective purchasers must purchase a lot immediately to ensure that a particular location they desire will be available.

n. That jobs for purchasers who decide to move to any of respondent's subdivisions will be obtainable, without specifying exactly which jobs are currently available for people with the prospective purchasers' qualifications and salary requirements.

o. That new industry is moving to any of respondent's subdivisions, unless the industry is actually moving onto the subdivision itself, and respondent shall describe exactly which industry or industries is or are moving to the subdivision or subdivisions, when such moves are to take place, and the number of jobs which will be made available.

p. That new industry is moving near respondent's subdivisions, unless the industry is actually moving, and respondent shall describe exactly which industry or industries is or are moving near to the subdivision or subdivisions, the mileage from the subdivision or subdivisions to the site of the industry or industries, when such moves are to take place, and the number of jobs which will be made available.

q. That persons being solicited to purchase respondent's property are being asked to take the first step, or are making a refundable deposit, or are reserving the property, or are not making a final decision, or are not buying the property, or otherwise representing that signing a contract does not create a binding legal obligation on the part of the purchaser, or in any manner whatsoever obscuring the legal or practical significance of signing a land sales contract.

2. Making any statement or representation which in any manner refers to or concerns investment in stocks, banks, annuities or any other form of investment.

3. In any way discouraging prospective purchasers from obtaining the assistance of counsel or other professionals in order to understand the provisons of respondent's land sales contracts or make other determinations as to the advisability of purchasing respondent's land.

4. Using any motion pictures, still pictures, or other depictions in any type of sales presentation or promotional materials unless such motion pictures, still pictures, or depictions are in fact genuine and accurate representations of what they purport to represent.

5. Including in any contract for the sale of respondent's land, or in any document shown or provided to purchasers or prospective purchasers of respondent's land, whether or not signed by such purchasers or prospective purchasers, language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of respondent's land, other than those set forth in the contract or document, or that any particular representation has not been made in such connection.

6. Including in any contract for the sale of respondent's land, or in any document shown or provided to purchasers or prospective pur-

chasers of respondent's land, whether or not signed by such purchasers or prospective purchasers, language to the effect that upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, the seller shall be entitled to retain sums previously paid thereunder by the purchaser in excess of the seller's actual damages.

7. Including in any contract or other document any waiver, limitation or condition on the right of a purchaser to cancel a transaction or receive a refund under any provision of this Order, except as such waiver, limitation or condition is expressly allowed by this Order.

8. Misrepresenting the right of a purchaser under any provision of this Order or any applicable statute or regulation to cancel a transaction or receive a refund.

9. a. Representing that respondent will provide, or that respondent's subdivisions will have available, any facility or improvement, other than the utilities treated separately in paragraph 2. of Section III of this Order, unless respondent's contracts at the time of the representation contain (i) a legal obligation on the part of respondent to provide or make available said facilities and improvements at a date certain, not later than 12 years from the date of purchase, set out clearly and conspicuously in the contract, and (ii) a statement as to the cost to the purchaser, if any, for such facilities or improvements.

b. Failing to express the aforesaid contractual obligation set out in subparagraph a. above in the contract with the purchaser in the following manner:

(i) A complete description of each improvement or facility to be provided or made available;

(ii) A provision that in the event any of the improvements or facilities specified in the contract are not available to the lot which is the subject of the contract or are not completed within six months of the time provided in the contract, respondent will immediately, upon the expiration of said six-month period, provide the purchaser by certified mail, return receipt requested, with notice of such unavailability of or failure to complete the aforesaid improvements or facilities, and of the purchaser's right to exercise within 30 days of receipt of said notice his option to receive an exchange or to cancel and receive a full refund as set out in subparagraph (iii) below;

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(iii) An option to the purchaser stated substantially as follows:

> In the event that any of the improvements or facilities specified by the seller in this contract are not available to the lot which is the subject of this contract or are not completed within six months of the time provided in this contract, the buyer may elect, at his option, to (1) receive an exchange acceptable to the buyer of the contracted-for homesite property for another of at least equal price, equivalent size, and with those improvements contracted for as set forth in subparagraph a. above or (2) cancel this contract and receive from the seller a full refund of all monies paid under the contract plus 6% interest compounded annually. To exercise this option, the buyer must give notice to the seller by registered or certified mail within 30 days after receipt of notice from the seller of such unavailability of or failure to complete the aforesaid improvements or facilities. Where the buyer has received a deed or other evidence of interest in the contracted-for property other than this contract, the buyer must, as a condition of obtaining an exchange or a refund hereunder, convey to the seller such documents as are necessary to release title to such property, which documents are to be prepared by respondent. In the event only the contract has been recorded in the Public Records, the buyer must quit claim in recordable form his interest to the seller to remove any cloud on the title to said property.

c. Failing to make the exchange or refund requested by a purchaser under the terms of this Paragraph of the Order within 60 days of receipt of notification from the purchaser.

d. Soliciting or obtaining the purchaser's assent to or otherwise imposing any condition, waiver or limitation upon the right of a purchaser to an exchange or a refund as set forth in this Paragraph of the Order; provided, however, that respondent may require purchasers to request an exchange or a refund within a stated time period of not less than 30 days after receipt by the purchaser of the notice required by subparagraph b. (ii) above.

II

IT IS FURTHER ORDERED that respondent AMREP Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, shall forthwith:

1. Include, clearly and conspicuously, in any written or oral invitation or other communication concerning any event or activity, including, but not limited to, dinner parties or other gatherings, awards of free or low cost gifts, sightseeing tours, or any other goods or services, which invitation or other communication is in any manner related to the sale of land, the following statement: "The purpose of [the event or activity] is to persuade you to sign a contract for the purchase of undeveloped land in [name of state in which land is located] at a cost of approximately [average contract price in the subdivision during previous year rounded off to nearest $500 or, in the case of a new subdivision, average offering price rounded off to nearest $500]."

If said invitation or communication is in writing, such disclosure shall be in writing and shall be made clearly and conspicuously in the invitation or communication; if the invitation or communication is oral such disclosure shall be made orally during the telephone invitation or communication, and in writing by mail to be received by the prospective purchaser at least three days prior to the event or activity; provided however, that in the case of consumers already within the state within which the subdivision is located, such disclosure may be made one day prior to a tour, so long as (a) all written materials given to such consumers make such a disclosure in print as large as the largest print in such materials, and (b) all agents of respondent who promote the tour and all employees of respondent who in any way attempt to influence consumers' decisions orally inform consumers of the purpose of the tour.

2. a. Include clearly and conspicuously in all sales presentations, promotional materials, and advertising, other than any TV or radio advertisements, in the same size type as that which is predominantly used in such material, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF OUR LAND TO BE VERY RISKY. THE FUTURE VALUE OF THIS LAND IS VERY UNCERTAIN--DO NOT COUNT ON AN INCREASE IN ITS VALUE.

IT HAS NOT BEEN POSSIBLE FOR PURCHASERS OF LAND FROM AMREP TO RESELL THE LAND AT A PROFIT. PURCHASERS USUALLY HAVE BEEN UNABLE TO RESELL THE LAND AT ALL.

IT IS SUGGESTED THAT YOU DISCUSS ANY POSSIBLE PURCHASE WITH A LAWYER, REALTOR OR OTHER QUALIFIED PROFESSIONAL.

b. Include, clearly and conspicuously, in all TV and radio advertisements, the following statement:

YOU SHOULD CONSIDER THE PURCHASE OF ANY OF OUR LAND TO BE VERY RISKY.

3. Set forth on the first page of any contract for the sale of land in 24-point boldface type, "'CONTRACT FOR THE PURCHASE OF LAND," with no other writing except that required by the following paragraph and paragraph 1. of Section III of this Order.

4. Print the following in 12-point boldface type as the only writing, in addition to that required by the preceding paragraph and paragraph 1. of Section III of this Order, on the first page of all contracts for the sale of land:

THIS IS A CONTRACT BY WHICH YOU AGREE TO PURCHASE LAND. YOU SHOULD NOT CONSIDER THIS PURCHASE AS AN INVESTMENT. THE FUTURE VALUE OF THIS LAND IS VERY UNCERTAIN--DO NOT COUNT ON AN INCREASE IN ITS VALUE. IN FACT, THERE IS VIRTUALLY NO RESALE MARKET FOR THIS LAND; PREVIOUS PURCHASERS HAVE, FOR THE MOST PART, FOUND IT IMPOSSIBLE TO SELL THE LAND AT ALL, MUCH LESS AT A PROFIT.

IT IS THEREFORE SUGGESTED THAT YOU CONSIDER YOUR NEEDS CAREFULLY, AND HAVE BOTH THIS CONTRACT AND THE PROPERTY REPORT REVIEWED BY A LAWYER, REALTOR, OR OTHER QUALIFIED PROFESSIONAL.

WHILE YOU HAVE 10 BUSINESS DAYS IN WHICH TO RECONSIDER YOUR DECISION AND CANCEL THIS CONTRACT WITH FULL REFUND WE RECOMMEND THAT YOU NOT SIGN UNTIL EXERCISING THE CARE SUGGESTED IN THE PREVIOUS PARAGRAPH.

_____ _____

Signature Date

No contract for the sale of respondent's land shall be valid unless this statement is signed and dated by the purchaser after he has had a reasonable amount of time to read the whole page.

5. Furnish each purchaser, at the time the purchaser signs a contract for the sale of land, with two copies of a form, captioned in 12-point type "NOTICE OF RIGHT OF CANCELLATION," which shall contain in 10-point boldface type the following information and statements.

_____
Date of Transaction

_____
Contract Number

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE SHOWN ON THE CONTRACT.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWIN RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO [name of respondent], AT [address of respondent's place of business] NOT LATER THAN MIDNIGHT OF _____[Date]_____.

I (WE) HEREBY CANCEL THIS TRANSACTION. (EACH PURCHASER MUST SIGN THIS NOTICE.)

_____ _____
[Date] [Signature of purchaser]

Respondent shall, before furnishing copies of this "Notice of Right of Cancellation" to the purchaser, complete both copies by entering the name of the respondent, the address of the respondent's place of business, the date of the transaction, the contract number, and the date, not earlier than the tenth business day following the date of the transaction, by which the purchaser may give notice of cancellation.

Respondent shall, where a timely notice of cancellation is received and said notice is not properly signed, and respondent does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

Respondent shall, where the signature of a prospective purchaser is solicited during the course of a sales presentation, inform each person orally, at the time he signs the contract, of his right to cancel as stated in this Paragraph of the Order.

6. Include clearly and conspicuously in each contract for the sale of respondent's land the following statement in 12-point boldface type.

PURCHASER HAS THE RIGHT TO CANCEL THE CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

SHOULD PURCHASER CHOOSE TO CANCEL PURSUANT TO THIS PROVISION, ANY PAYMENTS MADE BY PURCHASER UNDER THIS CONTRACT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY PURCHASER WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF THE CANCELLATION NOTICE.

TO CANCEL THE TRANSACTION, PURCHASER MUST MAIL OR DELIVER A SIGNED COPY OF THE NOTICE OF RIGHT OF CANCELLATION FURNISHED BY SELLER, A TELEGRAM, OR ANY OTHER WRITTEN NOTICE TO RESPONDENT AT RESPONDENT'S PLACE OF BUSINESS NOT LATER THAN MIDNIGHT OF THE TENTH BUSINESS DAY AFTER THE DATE OF THIS CONTRACT.

7. Honor any signed and timely notice of cancellation by a purchaser, and within 10 business days after the receipt of such notice, (a) refund all payments made under the contract, and (b) cancel and return any negotiable instrument executed by the purchaser in connection with the contract.

8. Send (1) any report required by either Federal or State law to be furnished to a purchaser of respondent's land at or before the signing of a contract, and (2) a copy of all materials required to be furnished by this Order, along with any invitation or other communication inviting the prospective purchaser's attendance at a land sales dinner.

9. If the land is to be sold other than at a land sales dinner, furnish any report required by Federal or State law to be furnished to a purchaser of respondent's land at or before the signing of a contract, and all materials required to be furnished by this Order, with the first written materials or during the first contact which the prospective purchaser has with respondent or any of its agents or employees.

10. Include in 12 point boldface type in all materials, including the land sales contract, which discuss the privilege to exchange for a lot on which a dwelling can be constructed, or if such privilege is described orally, include in the oral presentation, the following statement:

> A SUBSTANTIAL NUMBER OF PURCHASERS WHO EXCHANGE FOR BUILDING LOTS OBTAIN A SMALLER PARCEL OF LAND IN EXCHANGE FOR THE VACANT LOT, AND ALSO PAY A SUBSTANTIAL AMOUNT OF MONEY FOR THE EXCHANGE. IT IS THE COMPANY'S POLICY TO ENCOURAGE SUCH UNEVEN EXCHANGES. THEREFORE, PURCHASERS SHOULD REALIZE THAT THEY WILL BE SUBJECTED TO VARIOUS PRESSURES BY THE COMPANY TO MAKE SUCH AN UNEVEN EXCHANGE.

11. Where land is being sold by respondent at a land sales dinner held by any subsidiary of respondent, inform each prospective purchaser both orally and in writing that the subdivision in which the land is being offered is wholly owned by the AMREP Corporation and that the subsidiary offering the land at this dinner is also owned by the AMREP Corporation.

12. Inform orally and in writing all prospective purchasers of vacant land that home financing may not be available, and that a bank located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to build or purchase a house on that land.

13. Whenever respondent offers a refund contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the property in which the purchaser's lot is located:

> a. Provide the purchaser three business days after taking said tour or making said inspection within which to request a refund;
>
> b. Include in any contract, in immediate proximity to the provision setting forth the availability of a refund upon the completion of a company-guided inspection tour or registered inspection of the property, the following statement:

YOU, THE PURCHASER (S), HAVE AN ADDITIONAL RIGHT TO CANCEL THIS TRANSACTION IF YOU TAKE THE COMPANY-GUIDED TOUR OR MAKE A REGISTERED INSPECTION OF THE PROPERTY AND NOTIFY THE COMPANY PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF SUCH TOUR OR INSPECTION.

c. Orally inform the purchaser at the time the contract is signed and at the time the tour is taken or the inspection is registered of this cancellation right.

d. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall contain in boldface type of a minimum size 10 points the following statements:

NOTICE OF CANCELLATION

Date of company-guided inspection tour of property

Contract number

YOU MAY CANCEL YOUR CONTRACT WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL YOUR CONTRACT, MAIL OR DELIVER A SIGNED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO: (Name of Respondent), at (address of respondent's place of business) NOT LATER THAN MIDNIGHT OF

_____.

I (WE) HEREBY CANCEL THE CONTRACT. (EACH PURCHASER MUST SIGN THIS NOTICE.)

_____
(Date)

_____
(Purchaser's signature)

_____
(Purchaser's signature)

e. Before furnishing the purchaser copies of the "Notice of Cancellation" set forth in subparagraph d. above, complete both copies by entering the name of the respondent and the address of its place of business, the date of the company-guided inspection tour or the registered inspection of the property, and the date, not earlier than the third business day following the date of said tour, or inspection by which the purchaser may give notice of cancellation.

f. Provide an additional notice of cancellation as prescribed in subparagraph d. above to purchasers not on a tour and purchasers who withdraw from tours, (1) who have completed their registration inspection, (2) who are invited to remain in the area and (3) who meet again with respondents or its agents. Said notice shall be provided to these purchasers on the day of the last such meeting. The notice shall be completed as required by subparagraph e. above except the date by which the purchaser may give notice of cancellation shall be not earlier than the third business day following the date of the last such meeting.

For the purpose of determining the date after which the cancellation period shall begin to run, the termination date of the tour shall be controlling for all purchasers on a tour. The termination date of the tour for any purchaser who withdraws from a tour shall be the date he notifies respondent or its agents of his decision. For purchasers not on a tour, the date of the registered inspection shall be controlling.

Respondent shall, where a timely notice of cancellation is received purportedly in accordance with the requirements of this Paragraph of the Order, but where said notice is not properly signed, and respondent does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

III

IT IS FURTHER ORDERED that respondent AMREP Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly

or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale of land or other real property in or affecting commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from advertising for sale, offering for sale, contracting to sell, or selling any interest in

1. Any land represented in any manner as being usable now or in the future as a homesite, unless either:

(1) At the time of sale all of the conditions set forth below are met, or

(2) The respondent's contract with the purchaser contains a legal obligation on the part of respondent to meet the conditions set forth below within seven years of the date of the sale.

The conditions to be met by respondent are as follows:

(1) The purchaser must have available an adequate sewage system by means of

(a) a septic tank or

(b) a central sewage system, the hook-up to which will cost the purchaser only a reasonable and customary main-line extension fee; provided that respondent must include on the face of the contract whether a septic tank will be necessary or whether a central sewage system will be available, and the approximate amount which a septic tank would cost to install or a central sewage system would cost to hook up to, including an estimate of the amount said fee will increase over the next seven years.

(2) The purchaser must be able to obtain potable water by hooking up to a central water system solely by payment of a reasonable and customary main-line extension fee; provided that respondent must include on the face of the contract the approximate amount of said extension fee, including an estimate of the amount said fee will increase over the next seven years.

(3) The purchaser must be able to obtain standard electricity and telephone service from a local utility authorized to do business in the state in which the land is located, which service will cost the lotholder only nominal hook-up and installation fees and customary and usual rates; provided that respondent must include on the face of the contract the approximate amount of said hook-up and installation fee, including an estimate of the amount said fee will increase over the next seven years.

If respondent fails for any reason to meet the conditions required by this paragraph, it shall refund to each purchaser to whom the obligations are not fulfilled all monies paid by such purchaser to respondent under the terms of the land sales contract, plus 6% interest, compounded annually.

2. Any land not covered in paragraph 1. above of this Order provision unless there shall appear in the form and place described in paragraph II 4. as additional paragraphs immediately following the first three paragraphs required by paragraph II 4., such of the following statements as are applicable:

a. For contracts for the sale of lots as to which neither respondents nor any other party is legally obligated to make a central sewer system available, add the following, including the third sentence only where applicable:

"A central sewer system will not be available when you have completed your contract payments. Installation of a septic tank would be at your expense. However, the use of a septic tank on your lot is contingent on approval by governmental authorities."

b.(i) For contracts for the sale of lots to which neither respondent nor any other party is legally obligated to make a central water system available, and where water is not available on an aid-in-construction basis, add the following, including the third sentence only where applicable:

"A central water system will not be available when you have completed your contract payments. Installation of a well would be of considerable expense to you. Moreover, it may not be possible to obtain drinkable water from a well in some areas."

b.(ii) For contracts for the sale of lots to which neither respondent nor any other party is legally obligated to make a central water system available, and where water is available on an aid-in-construction basis, add the following, including the fourth sentence only where applicable:

"A central water system will not be available when you have completed your contract payments. It may be impossible or impractical to obtain water from a central system due to the high cost of making this service available to this area. Installation of a well would be of considerable expense to you. Moreover, it may not be possible to obtain drinkable water from a well in some areas."

b.(iii) For contracts for the sale of lots to which neither respondent not any other party is legally obligated to make a central water system available, where water is available on an aid-in-construction basis, and there are legal restrictions on drilling for water, add the following, including the third sentence only where applicable:

"A central water system will not be available when you have completed your contract payments. It may be impossible or impractical to obtain water due to the high cost of making this service available to this area. Installation of a well is prohibited in some areas."

c. For contracts for the sale of lots to which electricity and telephone service will only be available to the purchaser on an aid-in-construction basis, add the following:

"It may be impossible or impractical to obtain electricity and telephone service due to the high cost of making these services available to this area."

d. For contracts for the sale of lots to which respondent or any other party is legally obligated only to provide an unpaved road with no maintenance obligations, add the following in lieu of all of the above:

"This completely undeveloped land is being sold 'as is'. Electricity, water, sewer and telephone service are not planned for this subdivision and may be impossible for you to obtain at a reasonable cost. Your lot will be accessible, if at all, only by unpaved roads which will not be maintained. The use of such roads may be impossible without maintenance. Your lot has virtually no use at present or in the foreseeable future."

e. For contracts for the sale of lots to or on which neither respondent nor any other party is legally obligated to provide any improvements, add the following in lieu of all of the above:

"This completely undeveloped land is being sold 'as is'. Electricity, water, sewer, and telephone service are not planned for this subdivision and may be impossible for you to obtain at a reasonable cost. No roads are planned and your lot is probably inaccessible by conventional transportation. Your lot has virtually no use at present or in the foreseeable future."

f. For contracts for the sale of lots in any of respondent's properties in which purchasers are required to join an improvement association which is obligated to spend accumulated funds for improvements to and services for lots such as, but not limited to, central water and sewer systems, telephone and electrical services, road maintenance and paving, add the following:

"You are obligated by this contract to join and make regular payments to [name of association.] The [name of association] is legally obligated to AMREP, but not to you, to use such funds to provide utilities and other improvements to and services for your lot. However, you must meet certain additional conditions and make a substantial additional payment, as set forth in the contract, before you request these utilities, improvements, and services."

If respondent fails for any reason to make the disclosures required by this paragraph, it shall refund to each purchaser to whom the disclosures were not made all monies paid by such purchaser to respondent under the terms of the land sales contract when requested to do so by such purchaser.

IV

IT IS FURTHER ORDERED that respondent shall notify by mail all purchasers under contract as of the date of this Order that (1) the clause in the contract, providing that the seller shall be entitled to retain all sums previously paid thereunder by the purchaser upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, is of no legal effect, and that if the purchaser decides to default, all monies paid by such purchaser to respondent in excess of respondent's actual damages will be refunded; and (2) the clause in the contract containing language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of respondent's land, other than those set forth in the contract, or that any particular representation has not been made in such connection, is of no legal effect and will not be relied upon by respondent for any purpose in any legal proceeding involving the contract; provided, however, that this Section of the Order shall not affect the rights of purchasers to refunds under any other Section of this Order. The form and content of such notice must be approved by the Federal Trade Commission prior to mailing.

V

IT IS FURTHER ORDERED that respondent AMREP Corporation, its successors and assigns:

1. Deliver, by certified mail, a copy of this Decision and Order to each of its present or future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondent's subdivisions.

2. Provide each person so described in the preceding paragraph with a form, returnable to the respondent and to the Commission, clearly stating his intention to be bound by and to conform his business practices to the requirements of this Order.

3. Inform all such present and future salesmen and other employees, independent brokers, and all others who sell or promote the sale of lots in respondents subdivisions that respondent shall not use any

person, or the services of any person, to sell or promote the sale of real estate unless such person agrees to and does file notice with the respondent and the Commission that it will be bound by the provisions contained in this Order. If any such person does not agree to so file notice with the respondent and the Commission and be bound by the provisions of the Order, the respondent shall not use such person, or the services of such person to sell or promote the sale of real estate.

4. Inform the persons so engaged that the respondent is obligated by this Order to discontinue dealing with those persons who continue on their own the unfair or deceptive acts or practices prohibited by this Order or fail to adhere to the affirmative requirements of this Order.

5. Institute a program of continuing surveillance adequate to reveal whether the business operations of each of said persons so engaged conform to the requirements of this Order.

6. Discontinue dealing with the persons so engaged, revealed by the aforesaid program of surveillance or by any other means who continue on their own the unfair or deceptive acts or practices prohibited by this Order; provided, that if remedial action is taken, evidence of such dismissal or termination shall not be admissible in any proceeding brought to recover penalties for alleged violation of any other paragraph of this Order.

IT IS FURTHER ORDERED that in the event that respondent transfers all or a substantial part of its business or assets to any other corporation or to any other person, including a transfer of all or part of the ownership interest of any or all of respondent's wholly-owned subsidiaries, respondent shall require said transferee to file promptly with the Commission a written agreement to be bound by the terms of this Order; provided that if respondent wishes to present to the Commission any reasons why said Order should not apply in its present form to said transferee, it shall submit to the Commission a written statement setting forth said reasons prior to the consummation of said succession or transfer.

IT IS FURTHER ORDERED that respondent corporation shall forthwith distribute a copy of this Order to each of its subsidiaries.

IT IS FURTHER ORDERED that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this Order.

BEST COPY AVAILABLE

IN WITNESS WHEREOF, the Federal Trade Commission, has caused its complaint to be served by its Secretary and its official seal to be hereto fixed at Washington, D.C. this 11th day of March, 1975.

By the Commission.

Charles A. Tobin
Secretary

SEAL

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE SECRETARY

MAR 31 1975

Solomon H. Friend, Esquire
General Counsel
AMREP Corporation
16 West 61 Street
New York, New York

Re: AMREP Corporation, et al.
FTC File No. 732 3153

Dear Mr. Friend:

This is in reference to the motion to quash for a stay and for other relief filed for AMREP Corporation on June 12, 1974, with respect to the subpoena duces tecum dated May 31, 1974 and issued and served upon Howard W. Friedman, President, AMREP Corporation, the motion filed on the same date on behalf of Mr. Friedman, joining in the aforementioned motion and your letter dated March 11, 1975.

As you are aware, on March 11, 1975, the Commission determined to issue a formal complaint under Part III of its Procedures and Rules of Practice against AMREP Corporation. On the same day, the Commission also determined to withdraw the aforementioned subpoena duces tecum without prejudice to the right of complaint counsel to subpoena the same material under the procedures set forth in Part III of the Commission's Procedures and Rules of Practice. Accordingly, the aforementioned motions to quash are moot.

Exhibit 2

Insofar as the motions seek to stay the grand jury investigation and possible criminal action pending completion of the Commission's action, or, alternatively, to stay the Commission's action pending the outcome of the grand jury investigation and possible criminal action, the Commission determined to deny the motions. In the course of reaching its decision, the Commission made the following determinations:

1. The Commission cannot require the Department of Justice or a United States Attorney to stay a grand jury investigation and possible criminal action pending completion of the Commission's action.

2. The Commission is not required to stay its action pending the outcome of the grand jury investigation and any criminal proceeding which may arise therefrom. United States v. Kordel, 397 U.S. 1 (1970); United States v. Article of Drug, 43 F.R.D. 181 (D. Del. 1967).

3. The Commission's action is not unnecessarily duplicative of the grand jury investigation initiated by the United States District Court for the Southern District of New York.

By direction of the Commission.

Chas. A. Tobin

Charles A. Tobin
Secretary

REGISTERED MAIL
RETURN RECEIPT REQUESTED

cc: Stanley S. Arkin, P.C.
300 Madison Avenue
New York, New York 10017

REGISTERED MAIL
RETURN RECEIPT REQUESTED

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF:

AMREP CORPORATION — MOTION FOR A STAY

a corporation. — DOCKET NO. 9018

----------x

COMES NOW AMREP Corporation by its attorneys and respectfully moves for an order staying all proceedings herein until the determination of an investigation presently being conducted by the U.S. Attorney for the Southern District of New York before a grand jury and any indictments which may result therefrom on the grounds: (1) that the publicity which has already engendered in this matter as a result of the issuance of the complaint herein and the press conference and press releases issued by officials of the FTC and the further publicity which will result from a public hearing and open discovery will create and has already created an atmosphere which may seriously prejudice the deliberations of the grand jury and jeopardize any defendant or prospective defendant in his right to a fair trial if an indictment is issued, as guaranteed by the Constitution of the United States; (2) that Constitutional safeguards, sound public policy and elemental justice require the staying of the instant administrative proceeding in the face of an on going criminal investigation; (3) that the use of compulsory discovery

during the pendency of a potential or actual criminal case would constitute an unreasonable search and seizure in violation of the Fourth Amendment of the United States Constitution and an unconstitutional exercise of inquisitorial authority, in violation of civilized standards of procedure in the administration of criminal justice; (4) that simultaneous FTC proceedings and grand jury investigation would impose substantial burdens on the company, its officers and officials and will seriously jeopardize and prejudice the constitutional rights of said officers and officials; (5) that the failure of the FTC complaint counsel to respond, in accordance with the FTC Rules of Practice, to a motion for a stay filed by respondent herein on June 12, 1974, has, in effect, resulted in a granting of said motion, notwithstanding the belated ruling by the FTC after the issuance of the complaint herein on March 17, 1975, declaring respondent's motion as moot.

Respondent further moves, pursuant to FTC Rules of Practice §3.23(b), for an order granting an interlocutory appeal to the Commission in the event the Administrative Law Judge shall determine that he has no jurisdiction to stay the instant proceeding or of an adverse ruling on respondent's motion, on the ground that the instant motion involves a controlling question of law and policy as to which there may be substantial ground for difference of opinion, that an immediate ruling by the Commission may materially advance the ultimate termination of the litigation, and that a subsequent review by the

Commission will be an inadequate remedy by reason of the fact that the Administrative Law Judge has ordered cross discovery to commence on May 30, 1975, and June 6, 1975.

Respondent further moves, pursuant to FTC Rules of Practice §3.23(c), for a stay of all proceedings before the Administrative Law Judge in the event the Administrative Law Judge shall grant that branch of respondent's motion specified in the preceding paragraph.

This motion is based upon the annexed affidavits of Theodore R. Schreier, Lawrence L. Klingman, the exhibits thereto and Memorandum of Law submitted in support thereof.

New York, New York
May 27, 1975

Solomon H. Friend
Theodore R. Schreier
I. David Parkoff
Attorneys for AMREP Corporation
Office & P.O. Address
16 West 61st Street
New York, N.Y. 10023

Telephone: 212-541-7300

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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IN THE MATTER OF:

AMREP CORPORATION,

a corporation.

AFFIDAVIT IN SUPPORT OF MOTION

DOCKET NO. 9018

----------x

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

AFFIDAVIT OF THEODORE R. SCHREIER

THEODORE R. SCHREIER, being duly sworn, deposes and says:

I am one of the attorneys for Amrep Corporation ("Amrep and I am familiar with the Complaint herein and all of the prior proceedings and matters hereinafter set forth.

This affidavit is submitted in support of the annexed motion for a stay in this action pending the determination of an investigation presently being conducted by a grand jury in the Southern District of New York and any indictments which may result therefrom. The grounds of said motion are set forth therein and in the interest of brevity, are not repeated.

Amrep is an Oklahoma corporation engaged in the land development business, whose shares are listed on the New York Stock Exchange.

In or before May 1973, the Federal Trade Commission, through its Los Angeles Regional Office, commenced an investiga

tion of Amrep's business. In compliance with a May 4, 1973 FTC request and an October 9, 1973 Subpoena Duces Tecum, Amrep furnished the FTC with various and substantial amounts of information and data.

Some ten months later, on March 29, 1974, Amrep was served with a grand jury Subpoena and learned that the Office of the United States Attorney for the Southern District of New York was conducting a duplicative investigation of Amrep's community development known as Rio Rancho.

On June 3, 1974, the Federal Trade Commission served on Amrep a Subpoena Duces Tecum, requiring the production of certain specified records, or in lieu thereof, a verified statement, and the appearance of its President to testify at a non-public hearing scheduled for June 14, 1974.

On June 12, 1974, Amrep moved the FTC, inter alia, for a stay of all proceedings by the Commission pending determination of the investigation being conducted by the grand jury in the Southern District of New York. Neither the FTC nor any of its attorneys interposed any answering papers or otherwise objected to the said motion. Rule 3.22-C of the FTC Rules of Practice specifically provides that answering papers or objections to a motion addressed to a subpoena must be filed within ten days and if not filed, the motion is deemed consented to.

On Tuesday, March 11, 1975, an application was made to the FTC for a determination of Amrep's June 12, 1974 motion and attention was once again directed to the necessity for a stay of

investigative and adjudicative proceedings herein because of the simultaneous and concurrent grand jury proceedings abovementioned. A copy of said application is annexed hereto and marked Exhibit 1.

On March 31, 1975, after the issuance of the complaint herein, the FTC advised respondent by letter attached hereto as Exhibit 2, that for the reasons stated therein, the motion had been denied.

Your deponent respectfully submits that the said FTC letter, Exhibit 2, is and can be of no effect whatever in curing the default of complaint counsel in failing to respond or object to Amrep's June 12, 1974 motion, or of waiving Rule 3.22-C of the FTC Rules of Practice which provides that a motion not objected to is deemed to be consented to. As such, the issuance of the complaint herein was in direct violation of the Commission's very own Rules of Practice in that, pursuant to said Rules, a stay of the proceedings herein was deemed to be consented to by operation of law.

On February 21, 1975, the term of the grand jury then considering the Amrep matter in the Southern District of New York expired without the issuance of any indictments. The investigation, however, continued before another grand jury and said investigation is continuing to this very date. In this connection, it is important to note that on or about May 19, 1975 and May 20, 1975, additional subpoenas duces tecum calling for the production of extensive corporate documents before the grand jury were issued. Copies of said additional subpoenas are annexed hereto as Exhibit 3,

and your deponent has been advised this date that another subpoena is in the process of being prepared and will be issued on May 27, 1975.

It is thus clear beyond peradventure of doubt that the grand jury proceedings are still continuing and that extensive documents are required to be submitted in connection therewith. It is further clear that these submissions are required to be made and subpoenas are being issued at the very time that discovery and preparation for trial will be required in the instant case.

In regard to the said grand jury proceedings, it should also be noted that several officers of respondent corporation have been subpoenaed and, as is their constitutional right, have asserted their Fifth Amendment privilege against self-incrimination. Your deponent verily believes that other executives may be subpoenaed to testify before the grand jury and likewise may refuse to testify on the basis of their privilege against self-incrimination. As such, your deponent respectfully submits that the submission of discovery herein and the preparation for trial, including without limitation the designation and deposition of witnesses who are indispensible to a fair, prompt and just disposition of the instant case on its merits will be seriously impaired.

The FTC Rules of Procedure and Practice themselves underscore the procedural and practical difficulties of submitting discovery and preparing the instant case for trial while a concurrent and simultaneous grand jury investigation exists. Thus,

FTC Rule 3.39 specifically provides that where Commission complaint counsel and counsel other than Commission complaint counsel desire an order requiring a witness or deponent to testify or provide other information concerning an FTC case in the adjudicative stage, and it is alleged that such witness has refused to testify on the basis of his privilege against self-incrimination, a request must be submitted through the Commission for approval by the Attorney General of the United States for the issuance of an order granting immunity to said witness and requiring him to testify. Since several of respondent's officers have already asserted their privilege against self-incrimination before the grand jury, it must be assumed that immunity has not been granted to said officers by the Attorney General of the United States with respect to said officers' testimony before the grand jury. Clearly, therefore, the instant case is in a posture where witnesses who are necessary for respondent's defense, if not for complaint counsel's case in chief, must receive immunity with respect to their testimony in the instant case from the very same Attorney General of the United States who has declined to grant same with respect to said witnesses' testimony before the grand jury.

Your deponent recognizes that witness lists have not yet been exchanged between complaint counsel and respondent's counsel and anticipates that complaint counsel, therefore, will contend that the immunity contention being made herein is premature. Complaint counsel's contention in this regard is without merit.

In the case at bar, the Administrative Law Judge has issued an order following a prehearing conference herein requiring cross discovery between the parties, and expeditious trial preparation. Obviously such discovery and trial preparation require that the attorneys for respondent confer with respondent's principal officers and have access to numerous documents and records. It requires no elaborate argument to demonstrate that such discovery and trial preparation cannot go forward in an atmosphere of free and open disclosure between counsel and their clients and imposes a virtually insuperable burden where, as here, the repositories of such information have asserted their Fifth Amendment privilege against self-incrimination and stand in real danger of being whip-sawed between the requirement, on the one hand, to make discovery and prepare for trial in the instant case, and to protect, on the other hand, their constitutional privilege against self-incrimination. To put it directly, it is simply unjust and unconscionable to require respondent and its officers as to whom the Commission herein seeks a cease and desist order (even though they are not named as individual respondents in the caption hereof) to complete discovery and expedite the preparation of trial including the taking of depositions, the giving of testimony and the providing of other information to a government agency, at the very same time that a criminal investigation is proceeding by another government agency regarding virtually the identical issues in the instant case. As is shown in the accompanying

Memorandum of Law, where even less compelling facts and circumstances were involved, the courts have exercised judicial restraint and have acted in the highest tradition of fair play under historic concepts of Anglo-Saxon justice in criminal cases, to stay the civil case pending termination of the criminal matter.

In this connection, it is not without significance to note that the Commission itself has previously announced in press releases and in a press conference held March 17, 1975, that the instant case will not be concluded before at least three years. While, of course, additional delay in concluding the instant case is neither called for nor sought by respondent, nevertheless on balance, the rights of respondent and its principal officers to a determination of the grand jury proceedings free of prejudice engendered by publicity and of the whipsawing effect of having to prepare for and defend simultaneous civil and criminal proceedings, greatly outweighs the necessity for immediate discovery and trial preparation herein. Further to this point, it is significant that the FTC investigation herein was commenced in 1972 and continued for more than 2½ years before a complaint issued.

Moreover, public health or safety are not involved in the instant case. Indeed, respondent's activities have been and are regulated by the Federal Office of Interstate Land Sales as well as the laws and regulations of every state in which respondent transacts business. In fact, as recently as May 8, 1975, numerous amendments to respondent's Federal Property Report, contract and Statement of Record were filed with the Office of Interstate

Land Sales Registration with respect to its Rio Rancho development and were accepted by the said Federal agency as containing adequate and proper consumer information and disclosures. The nature of said information and disclosures are set forth in said amended Property Report annexed hereto as Exhibit 4.

Further, respondent's advertising materials are not in use and new materials are not distributed to prospective customers, unless and until said advertising materials have been reviewed by the New York State Department of State acting pursuant to Article 9A of the New York Real Property Law and receive an official "NYA Number" signifying their acceptance by the New York agency. The same is true with respect to respondent's Florida development. Indeed, the regulations issued by the Office of Interstate Land Sales contain specific advertising guidelines which your deponent verily believes have been complied with in all respects regarding advertisements applicable to all respondent's developments. Your deponent intends to reserve for future submission respondent's contention that the Office of Interstate Land Sales has primary jurisdiction regarding consumer information and disclosures and the propriety of respondent's advertisements. The point being made at this juncture is simply that the necessity to bring the instant case to a rapid conclusion does not, on balance, outweigh the necessity for preserving and protecting the constitutional right of respondent and its officers to a determination of concurrent criminal proceedings without jeopardy and prejudice and publicity hurtful to them.

Respondent's fear of adverse publicity is not without real basis in fact. As is shown in the annexed affidavit of Lawrence L. Klingman, on March 14, 1975, at 4:24 P.M. Mr. Klingman was advised by a Mr. McEnnis, Public Information Officer of the FTC, that the FTC would hold a press conference on March 17, 1975 and invited respondent to make a statement at said press conference. Of course, respondent, not yet having received the FTC complaint, was in no position to do so and did not in fact do so thereafter, because of your deponent's concern and belief that press conferences concerning litigation are inconsistent with, and anathema to, the code of professional ethics, nor are they a proper forum for trying litigation.

Attached to Mr. Klingman's affidavit are examples of the massive news coverage which the FTC press conference and press releases engendered. Said coverage was nationwide and included newspapers, magazines, radio, television and all other forms of media communication. The publicity in the New York area itself, where the grand jury is sitting, was so pervasive and extensive that it cannot be reasonably suggested that any one grand juror could have failed to become aware of the FTC's press conference and releases. Rarely, if ever, has any press conference and release received this type of massive coverage and media dissemination from any government source. If such is the form of publicity which occurred by the mere issuance of a complaint which simply marks the beginning of an administrative proceeding, it requires little imagination to contemplate the publicity which

will result from open discovery and a public trial. The consequences of such publicity already engendered and reasonably anticipated to be engendered, are so staggering as to cry out desperately for the invocation of judicial protection to prevent real and unfanciful prejudice and jeopardy to respondent and its officers with reference to the on going parallel criminal proceeding.

Your deponent respectfully submits that as a matter of justice, fair play and in keeping with the highest traditions of criminal justice, the instant civil proceeding should be stayed pending determination of the parallel criminal proceeding.

As is shown in the accompanying Memorandum of Law, abundant legal precedent exists for the issuance of a stay herein, not merely as a matter of law, but as a matter of sound judicial discretion occasioned by the extraordinary and compelling circumstances involved herein.

For all of the above reasons, deponent respectfully requests that the FTC's proceedings herein be stayed pending the determination by the grand jury in the Southern District of New York.

Theodore R. Schreier

Theodore R. Schreier

Sworn to before me this
27th day of May, 1975.

Ines Flores

INES FLORES
Notary Public, State of New York
No. 03-1256260
Qualified in Bronx County
Commission expires March 30, 7

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF:

AMREP CORPORATION,

a corporation.

AFFIDAVIT IN SUPPORT OF MOTION

DOCKET NO. 9018

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LAWRENCE L. KLINGMAN, being duly sworn, deposes and says:

I am the President of Commco P.R., Inc., a public relations firm which represents Amrep Corporation, and as such, I am fully familiar with all of the publicity emanating from the FTC with respect to the matters hereinafter set forth.

This affidavit is submitted in support of Respondent's motion to stay this action pending the determination of a grand jury investigation presently proceeding in the Southern District of New York.

I am the Account Executive of Commco P.R., Inc. with respect to the Amrep account. On Friday, March 14, 1975, at 4:24 P.M., Eastern Standard Time, I received a telephone call from a Mr. McEnnis, Public Information Officer of the FTC. Mr. McEnnis stated that inasmuch as the FTC was issuing a complaint against Respondent, Respondent was invited to make a statement at a press conference to be held on the next business day, Monday, March 17, 1975.

Having been so informed by Mr. McEnnis, I attempted to notify the appropriate officers of Respondent. I was unable during working hours to advise them of the news conference and the invitation to make a statement at the press conference because the Respondent's switchboard was closed on account of a storm passing through New York City at the time.

In passing, it should be noted that I have been informed that the office of Walter Cronkite of CBS News had been tipped off with respect to the FTC's press conference and of the issuance of the complaint at 2:00 P.M. Eastern Standard Time and John Chancellor of NBC News had the story between 2:10 and 2:15 P.M., Eastern Standard Time, on March 14, 1975. Later in the day a Vice President of Rio Rancho Estates, a subsidiary of Respondent, was advised by the FTC at 4:30 P.M., Eastern Standard Time, that a complaint had been, or was being, mailed from Washington, D.C. on Friday afternoon, March 14, 1975, and that a press conference was being held Monday morning, March 17, 1975.

On March 17, 1975, I attended the FTC's press conference in Washington, D.C., at which Jay Thomas Rosch, Director, Bureau of Consumer Protection, and Carol Emerling, Action Officer, spoke on behalf of the FTC. I noted between fifty and eighty correspondents and representatives of newspapers, networks, wire services, and television and radio media present at the conference. The FTC news conference was as meticulously

choreographed by the FTC and as heavily attended by the working press as some press conferences of State Secretary Kissinger which I have observed.

As a public relations spokesman for Respondent, I was particularly distressed by my inability to make any rebuttal statement or defense with respect to the FTC's complaint at the press conference on March 17, 1975. Nothing could be said because the FTC complaint had not yet been received by Respondent. Accordingly, without having seen and studied the complaint, it was impossible for Respondent to make any rebuttal statement at the press conference, despite the FTC's empty invitation to do so.

Subsequent to the press conference, the news of the FTC complaint was carried on practically all, if not all, of the radio stations in the United States, all television stations, CBS News, ABC News, NBC News, Metromedia News, the New York Daily News, the Scripps-Howard newspapers, the Associated Press, the United Press, Reuters, Dow Jones, the Wall Street Journal, The New York Times, the New York Post, Channel 5 television in New York, Channel 11 television in New York, and practically every news outlet in the United States. Annexed hereto as Exhibit A and made a part hereof are clippings from the various newspapers and, where available, the average daily circulation figures of each such paper, as well as copies of the scripts for radio and television material.

In addition to the foregoing, Amrep and its public relations people have been deluged with requests for information and interviews from reporters, special correspondents, Newsweek, Time magazine, and numerous other segments of the press, and television and radio media.

Therefore, for all of the above reasons, deponent respectfully requests that the FTC's proceedings herein be stayed pending the determination by the grand jury in the Southern District of New York.

Lawrence L. Klingman

Sworn to before me this
21st day of May, 1975.

Ines Flores

INES FLORES
Notary Public, State of New York
No. 03-1256260
Qualified in Bronx County
Commission expires March 30, 1977

FEDERAL TRADE COMMISSION
RECEIVED
JUN 30 1975
SECRETARY

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
AMREP CORPORATION, a corporation.	)	DOCKET NO. 9018

RULING DENYING MOTION FOR A STAY AS A MATTER OF LAW BUT CERTIFYING TO THE COMMISSION QUESTION WHETHER SUCH STAY SHOULD BE GRANTED AS A MATTER OF ADMINISTRATIVE DISCRETION OR POLICY

Respondent Amrep moves for an order staying all proceedings in this matter until the determination of an investigation presently being conducted by the U.S. Attorney for the Southern District of New York before a grand jury "and any indictments which may result therefrom." As a basis for such a stay Amrep contends (1) that the publicity already engendered by this proceeding and the further publicity which will result will create an atmosphere which may seriously prejudice the deliberations of the grand jury and jeopardize any defendant in his right to a fair trial if an indictment is issued, (2) that constitutional safeguards, sound public policy and elemental justice require a stay of this administrative proceeding in the face of an ongoing criminal investigation, (3) that the use of compulsory discovery in the administrative proceeding during the pending of a potential or actual criminal proceeding constitutes an unreasonable search and seizure and an unconstitutional exercise of inquisitional authority in violation of civilized standards and procedure, (4) that simultaneous Federal Trade Commission and grand jury proceedings would impose substantial burdens

on the company and seriously jeopardize and prejudice the constitutional rights of its officers and officials, and (5) failure of complaint counsel to respond "in accordance with Federal Trade Commission Rules of Practice" to a motion to quash a subpoena for a stay and other relief filed a year ago on June 12, 1974, during the investigational phase of this matter has in effect resulted in the granting of said motion notwithstanding the ruling by the Commission "after the issuance of the complaint" herein denying respondent's motion to quash as moot and denying the motion to stay.

Respondent's motion and supporting memorandum raise two questions (1) whether as a matter of law respondent is entitled to a stay of the Commission's administrative proceeding, and (2) whether a stay should be entered as a matter of the Commission's administrative discretion. The undersigned has authority to rule on the first since it presents a question of law properly within the scope of the adjudicative function performed by the administrative law judge, but must certify the second to the Commission. Crush International, 80 F.T.C. 1023 (1972); Philip Morris, Inc., 79 F.T.C. 1023 (1971); Maremont Corporation, 74 F.T.C. 1614 (1968); First Buckingham Community, Inc., 73 F.T.C. 938 (1968).

Respondent Amrep, in the opinion of the undersigned, is not entitled to a stay as a matter of law under applicable precedents. United States v. Kordel, 397 U.S. 1 (1970), would seem to dispose of most of respondent's contentions. In that case the FDA moved in a civil proceeding to seize certain products and served discovery interrogatories on the corporate defendant. Shortly thereafter the corporation vice-president and president were given notice that FDA contemplated a criminal proceeding against them with respect to the transactions which were the subject of the civil seizure action. Defendants moved to stay further proceedings in the civil action, or in the alternative, to extend the time for filing answers to the interrogatories until disposition of the criminal proceeding. It was urged that a stay of civil proceedings was required "in the interest of substantial justice" and as a "balancing of hardships and

equitities of the respective parties," and that permiting the Government to obtain proof of violations by resort to civil discovery procedures would be improper, would work a grave injustice, and would provide, among other things, unfair pretrial discovery of defenses to the criminal charges.

The District Court refused the stay. Defendant corporate officers were in fact indicted and were convicted. The convictions, however, were reversed by the Sixth Circuit on the ground that the Government's use of the interrogatories to obtain evidence in the civil condemnation proceeding violated defendants' constitutional rights. The Supreme Court, however, ruled that reversal of the conviction by the Court of Appeals was erroneous and stated:

> "The respondents urge that even if the Government's conduct did not violate their Fifth Amendment privilege against compulsory self-incrimination, it nonetheless reflected such unfairness and want of consideration for justice as independently to require the reversal of their convictions. On the record before us, we cannot agree that the respondents have made out either a violation of due process or a departure from proper standards in the administration of justice requiring the exercise of our supervisory power. The public interest in protecting consumers throughout the Nation from misbranded drugs requires prompt action by the agency charged with responsibility for administration of the federal food and drug laws. But a rational decision whether to proceed criminally against those responsible for the misbranding may have to await consideration of a fuller record than that before the agency at the time of the civil seizure of the offending products. It would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial."

Although, as respondent Amrep urges, Kordel may not have reached the Supreme Court on the literal question whether a civil proceeding should be stayed pending determination of criminal proceedings, that issue was implicit in the Court's disposition of the case as the foregoing language reveals. In deciding that the issuance of the interrogatories in the civil proceeding involved no abridgment of constitutional rights, violation of due process, or departure from proper standards in the administration of justice, the Court in effect held that the denial of a stay of the agency's civil proceeding was proper notwithstanding the simultaneous criminal actions against defendants.

Stays of civil or administrative proceedings have been denied in other cases. General Dynamics v. Selb Mfg. Co., 481 F.2d 1204 (8th Cir. 1973), cert. denied, 414 U.S. 1162 (1974); Gordon v. FDIC, 427 F.2d 578 (D.C. Cir. 1970); Gellis v. Casey, 338 F. Supp. 651 (S.D.N.Y. 1972). In General Dynamics, the Eighth Circuit rejected defendants' request for an indefinite postponement of civil proceedings until final determination of convictions arising out of same subject matter as unreasonable noting that justice "must be done in both criminal and civil litigation," and that protection of a defendant "does not mandate a complete disregard for the rights of civil litigants." 481 F.2d at 1213. In Gordon v. Federal Deposit Insurance Corp., 427 F.2d 578 (D.C. Cir. 1970), a stay of civil proceedings because of the pendency of criminal prosecution involving the same or related matters was also refused. Quoting from United States v. Kordel, supra, the Court rejected the contention that a stay be granted because the case involved the FDIC, an "arm of the same government that is prosecuting the criminal case." In denying the stay, Judge Leventhal stated:

> "[T]he fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter."

In Gellis v. Casey, 338 F. Supp. 651 (S.D.N.Y. 1972), a registered securities representative was one of several defendants in an SEC administrative proceeding. Prior to commencement of hearings he was informed that the transactions involved in the administrative proceeding had been called to the attention of the U.S. Attorney for possible presentation to the grand jury. He then moved "for an adjournment of the administrative proceeding until all criminal proceedings stemming from the same transactions had been disposed of, or until plaintiff was granted transactional immunity." The SEC denied the motion and suit was brought in the U.S. District Court to enjoin the administrative proceeding. The District Court denied the injunction, citing Kordel, and ruling that the mere possibility of criminal prosecution was not sufficient reason for staying the administrative proceeding.

In DeVita v. Sills, 422 F.2d 1172 (3rd Cir. 1970), defendant in a criminal proceeding sought to enjoin a state judicial inquiry, looking toward his disbarment and removal from judicial office, from being conducted prior to the completion of the criminal proceeding which arose from the same alleged misconduct. The Court of Appeals rejected arguments that simultaneous criminal and disciplinary proceedings were highly prejudicial and that such prejudice was of constitutional dimensions.

The Court specifically rejected the claim, similar to that made by respondent Amrep here, that the publicity which would be engendered by the disbarment proceedings would prejudice a fair trial in the criminal proceedings guaranteed by the Constitution. The Court observed that any prejudice because of publicity would arise not because of press reports but because the "trial court in the criminal case failed to adopt appropriate safeguards." It is relevant to note in connection with the prejudicial publicity argument of respondent that the officials of respondent who are before the grand jury have not been named in the Commission's complaint, which only challenges alleged acts and practices of Amrep Corporation. The Commission is not the body to determine claims that publicity will affect individuals connected with respondent corporation in a different proceeding in another forum.

In Koscot Interplanetary, 82 F.T.C. 260 (1972), the Commission denied a motion for a stay of the Commission's proceeding until all state criminal actions pending against respondents were completed. The Commission there rejected contentions that any attempt to defend in the administrative proceeding would constitute a waiver of respondents' claim of privilege against self-incrimination in pending criminal matters, and that issuance of an order to cease and desist in the face of respondents' assertion of their Fifth Amendment privilege would amount to a denial of due process of law. The Commission further concluded that successful prosecution of the criminal proceedings would not relieve the Commission of its responsibility to proceed against the acts and practices alleged in the complaint.

A motion seeking a stay filed during the investigation of this very matter was denied by the Commission. By letter to counsel for respondent "in reference to the motion to quash for a stay and for other relief filed June 12, 1974," the Commission stated that it is "not required to stay its action pending the outcome of the grand jury investigation and any criminal proceeding which may arise therefrom" (see Exhibit 2 attached to respondent's Motion For A Stay).1/

Reliance by respondent on Silver v. McCamey, 221 F.2d 873 (D.C. Cir. 1955), and Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962), is misplaced. Although no criminal indictments have apparently issued as a result of the grand jury proceeding involving respondent and its officials, it seems plain that if any do issue the charges will be different from those alleged in the Commission's complaint. As the Commission pointed out in Koscot, Silver v. McCamey recognized that where an administrative action is based on different charges from those in a criminal proceeding a stay of the administrative proceeding is inappropriate.

1/ The Commission's action denied a stay of the investigation. This matter is now an adjudicative proceeding. Inasmuch as this matter is now in an entirely different posture than it was a year ago during the investigation, in the opinion of the undersigned, prudence requires certification, as later described, notwithstanding the Commission's earlier denial of the motion to stay the investigation.

In any event, the Supreme Court's subsequent decision in United States v. Kordel, supra, nullifies any support respondent might derive from Silver v. McCamey.

In Campbell v. Eastland the real purpose of the civil proceeding apparently was to obtain information unavailable in the criminal proceeding. The case is accordingly inapposite. See DeVita v. Sills, supra, 422 F.2d at 1181.

The latter case also bears on respondent's argument that the use of compulsory discovery during the pending of a potential criminal case would constitute an unreasonable search and seizure in violation of the Fourth Amendment and an unconstitutional exercise of inquisitional authority in violation of "civilized standards of procedure." The Third Circuit in DeVita v. Sills remarked that although undoubtedly there were cases where a court in its discretion should stay discovery in a civil proceeding pending the disposition of a criminal case, "there is no constitutional requirement that this be done." 422 F.2d at 1181.

Nor does Boyd v. United States, 116 U.S. 616 (1886), support respondent's position. That case stands for the principle that compulsory production of an individual's own private papers to be used against him in a criminal proceeding compels him to be a witness against himself and amounts to an unreasonable search and seizure. But here respondent is a corporation, and the documentation subject to discovery in this proceeding is that of the corporate respondent Amrep, not that of any of respondent's officials before the grand jury. A subpoena duces tecum to a corporate respondent involves "no question of actual search and seizure." Oklahoma Press v. Walling, 327 U.S. 186, 195 (1946). The privilege against self-incrimination has no application to corporations, Wilson v. United States, 221 U.S. 361 (1911), and officials of respondent Amrep have no right to prevent the production of Amrep's corporate records on the ground of possible incrimination of themselves. United States v. White, 322 U.S. 694, 699 (1944). The assertion of respondent Amrep that production of corporate documents in the instant proceeding may affect individual officers and must be "cleared" with separate counsel representing them is no reason whatever to stay this administrative matter.

Respondent Amrep argues that witnesses who are necessary for its defense "must receive immunity with respect to their testimony from the very same Attorney General who has declined to grant same with respect to witnesses' testimony before the grand jury." According to respondent, a stay should therefore be granted. The argument is both premature and unfounded. Whether such witnesses will in fact be needed by Amrep in its defense must of necessity depend on future developments and the case presented by complaint counsel. Even if the answer to this were affirmative, it cannot be determined at this juncture that immunity would not be granted. Such immunity would merely prevent "use" of testimony in a criminal proceeding and would not afford "transactional" shelter to witnesses from prosecution for any offense to which the testimony related. In re Kilgo, 484 F.2d 1215 (4th Cir. 1973). In view of this, immunity might be granted. Further, a refusal to testify must be based on "substantial" and real, not merely trifling or imaginary hazards of incrimination. United States v. Casson, 288 F.Supp. 86, 90 (D. Del. 1968). Finally, to stay this proceeding on the ground that testimony of officers of respondent Amrep is essential for the defense, and that such testimony will not be available because immunity will not be granted would, in effect, permit respondent to assert on its own behalf the personal privilege of its individual agents. Such action would be completely erroneous. United States v. Kordel, supra, 397 U.S. at 8.

Respondent's concluding argument contends that a motion for a stay filed by respondent on June 12, 1974, which has been mentioned, was unanswered by complaint counsel "in accordance with the FTC Rules of Practice" and was accordingly granted. The motion, as noted, was filed during the investigative phase. Nothing in the Rules provides that such a motion is automatically granted if unanswered by the Commission's staff. Section 3.22(c) of the Rules of Practice applies to the adjudicative proceedings.

None of respondent Amrep's contentions warrant a stay of these proceedings as a matter of law.2/

The motion for a stay on this basis therefore is denied. The motion, however, as previously noted, invokes the administrative discretion of the Commission. To the extent that administrative policy or discretion is invoked, respondent Amrep's motion for a stay is hereby certified to the Commission. The ruling that respondent Amrep is not entitled to a stay as a matter of law is not certified. In the view of the undersigned the criteria for certification contained in § 3.23(b) are not present. Nevertheless, nothing precludes the Commission from reviewing it on the ground that it is intertwined with discretion and policy. See Crush International, supra, 80 F.T.C. at 1025.

Pretrial proceedings now underway before the Administrative Law Judge will continue. The request that they be suspended while the Commission decides the motion for a stay as a matter of administrative policy or discretion is denied.

Daniel H. Hanscom
Administrative Law Judge

June 27, 1975

2/ A reply filed June 23 and received June 26 was also considered although the filing thereof was not specifically permitted by the law judge. See § 3.22(c).

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Lewis A. Engman, Chairman
Paul Rand Dixon
Mayo J. Thompson
M. Elizabeth Hanford
Stephen Nye

In the Matter of AMREP CORPORATION, a corporation.	DOCKET NO. 9018 ORDER DENYING MOTION FOR A STAY

This matter is before us on the administrative law judge's certification, pursuant to § 3.22 of the Rules of Practice, of respondent's motion for a stay of these proceedings insofar as it invokes the administrative discretion of the Commission. The law judge rejected respondent's argument that it was entitled to such a stay as a matter of law to avoid prejudice to the rights of certain of its officers who are the subjects of a grand jury investigation now being conducted by the United States Attorney for the Southern District of New York.

For the reasons stated in the law judge's order, we conclude that none of the arguments raised in respondent's motion warrant a discretionary stay of these proceedings.*/ We find nothing in this matter which would warrant an oral argument as requested by respondent. Accordingly,

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*/ Respondent has also filed a Reply to complaint counsel's Answer to its Motion. Although the reply is not specifically authorized by the Commission's Rules of Practice, the Commission has, in its discretion, considered the arguments raised therein in reaching its decision.

D. 9018

IT IS ORDERED that the aforesaid motion, as certified by the law judge's order of June 30, 1975, be, and it hereby is, denied.

IT IS FURTHER ORDERED that respondent's request for oral argument on this matter be, and it hereby is, denied.

By the Commission.

Chas. A. Tobin

SEAL

Charles A. Tobin,
Secretary.

ISSUED: July 29, 1975

SUMMONS IN A CIVIL ACTION (Formerly D. C. Form No. 41 Rev. 12-1-61) CIV. 1 (9-70)

United States District Court

FOR THE JUDGE PIERCE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75 CIV. 4013

AMREP CORPORATION

Plaintiff

v.

FEDERAL TRADE COMMISSION

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

SOLOMON H. FRIEND, THEODORE R. SCHREIER -AND- I. DAVID PARKOFF

plaintiff's attorneyS , whose address

16 WEST 61 STREET
NEW YORK, N.Y. 10023

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,
Clerk of Court.

Deputy Clerk.

Date: NEW YORK, N.Y.
AUGUST 13, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMREP CORPORATION,	:	Civil Action
Plaintiff,	:	No.
-against-	:	COMPLAINT
FEDERAL TRADE COMMISSION,	:	
Defendant.	:	75 CIV. 2015

Plaintiff, by its attorneys, Solomon H. Friend, Theodore R. Schreier and I. David Parkoff, alleges as follows:

1. This action is brought under the Administrative Procedures Act, 5 U.S.C.A. §701, 702, 703 and 704, and 28 U.S.C.A. §1391.

2. At all times hereinafter mentioned, the plaintiff, Amrep Corporation (hereinafter called "Amrep"), was and still is an Oklahoma corporation having its principal place of business at 16 West 61st Street, New York, New York, within the Southern District of New York.

3. In or before May 1973, the defendant, the Federal Trade Commission, commenced an investigation of plaintiff's business.

4. On or before March 29, 1974, a grand jury in the Southern District of New York commenced a criminal investigation of Amrep and its community development known as Rio Rancho.

5. On February 21, 1975, the aforementioned grand jury expired without the issuance of any indictments. The investigation, however, continued and is continuing before another grand jury in the Southern District of New York.

6. On or about March 11, 1975, the defendant, the Federal Trade Commission, issued a complaint against plaintiff herein. A copy of said complaint is annexed hereto and made a part hereof, and marked Exhibit A. Thereafter the plaintiff filed its answer, a copy of which is annexed hereto and made a part hereof, and marked Exhibit B.

7. Thereafter and on or about May 28, 1975, plaintiff moved before The Honorable Daniel M. Hanscom, Administrative Law Judge, for an order staying all proceeding before the defendant, the Federal Trade Commission, until determination of the investigation being conducted before the grand jury in the Southern District of New York, on the grounds set forth in the Motion for a Stay, a copy of which is annexed hereto (excluding affidavits and exhibits) and made a part hereof, and marked Exhibit C.

8. Thereafter and on or about June 30, 1975, The Honorable Daniel M. Hanscom issued a ruling denying the Motion for a Stay as a matter of law but certifying to the defendant, the Federal Trade Commission, the question as to whether such Stay should be granted as a matter of administrative discretion or policy. A copy of said decision is annexed hereto and made a part hereof, and marked Exhibit D.

9. Thereafter and on or about the 29th day of July, 1975, the defendant, the Federal Trade Commission, issued an order denying the plaintiff's motion. A copy of said order is annexed hereto and made a part hereof, and marked Exhibit E.

10. This action is brought pursuant to the Administrative Procedures Act to review the actions concerning plaintiff's Motion for a Stay on the grounds set forth in the motion, and on the further grounds that failure by the defendant, the Federal Trade Commission, to grant the stay constitutes an abuse of discretion.

11. For the reasons set forth in the Motion for a Stay, plaintiff, Amrep, will be irreparably injured in that the defendant, the Federal Trade Commission, will, unless enjoined and restrained by appropriate order of this court, continue with its proceeding before the Federal Trade Commission, notwithstanding the substantial injury which will be caused to plaintiff in connection with the criminal investigation.

WHEREFORE, plaintiff demands that the defendant, the Federal Trade Commission, be enjoined and stayed during the pendency of the criminal investigation, from proceeding with the administrative action before it.

Solomon H. Friend,
Theodore R. Schreier and
I. David Parkoff
Attorneys for Plaintiff Amrep Corporation
Office and Post Office Address
16 West 61st Street
New York, N.Y. 10023
Telephone: (212) 541-7300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

AMREP CORPORATION,

Plaintiff,

- against -

FEDERAL TRADE COMMISSION,

Defendant.

----------x

NOTICE OF MOTION

75 Civ. 4013

TO: THE FEDERAL TRADE COMMISSION

PLEASE TAKE NOTICE that the undersigned will move before the Honorable Lawrence W. Pierce, United States District Judge, at his chambers, United States Court House, Foley Square, New York, New York, on the 5th day of September, 1975 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for a preliminary injunction pursuant to Rule 65(a) enjoining the Defendant, Federal Trade Commission, from proceeding to trial or conducting discovery in the case entitled "In the Matter of Amrep Corporation", Docket Number 9018, pending determination of a parallel criminal investigation pending before a grand jury in this District, on the grounds that the failure of the Federal Trade Commission to grant a stay of its proceeding was incorrect as a matter of law, arbitrary, capricious and an abuse of administrative discretion.

This Motion is based upon Plaintiff's Memorandum of Law and the following exhibits:

Exhibit 1 - Federal Trade Commission order denying motion for a stay issued July 29, 1975.

Exhibit 2 - Ruling of the Honorable Daniel H. Hanscom, Administrative Law Judge, denying Plaintiff's motion for a stay as a matter of law but certifying to the Federal Trade Commission the question as to whether such a stay should be granted as a matter of administrative discretion or policy.

Exhibit 3 - Motion of Amrep Corporation for a stay together with exhibits annexed thereto.

Exhibit 4 - Federal Trade Commission complaint against Amrep Corporation.

Exhibit 5 - Answer of Amrep Corporation

Exhibit 6 - Summons and complaint herein.

Dated: New York, New York
August 20, 1975

Theodore R. Schreier

SOLOMON H. FRIEND
THEODORE R. SCHREIER
I. DAVID PARKOFF
Attorneys for Plaintiff
AMREP CORPORATION
Office & P. O. Address
16 West 61 Street
New York, New York 10023
Telephone: (212) 541-7300

TDA:rs

75-2840

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Filed 8/29/75

AMREP CORPORATION,

Plaintiff,

-v-

FEDERAL TRADE COMMISSION,

Defendant.

NOTICE OF MOTION

75 Civ. 4013 (LWP)

SIRS:

PLEASE TAKE NOTICE, that upon the complaint and all prior proceedings had herein, the defendant, Federal Trade Commission, will move before the Honorable Lawrence W. Pierce of this Court, on September 11, 1975 in Room 2601, United States Courthouse, Foley Square, New York, New York for an order, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the complaint on the grounds that this Court lacks jurisdiction over the subject matter of this action and that the complaint fails to state a claim upon which relief can be granted and for such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 29, 1975

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the Federal Trade
Commission

By: _____
TAGGART D. ADAMS
Assistant United States Attorney
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York, 10007

TDA:rs

TO: SOLOMON H. FRIEND
THEODORE R. SCHREIER
I. DAVID PARKOFF
16 West 61 Street
New York, New York 10023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA	:	
- v -	:	INDICTMENT
AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORP., HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OPERMAN, SOLOMON H. FRIEND, and DANIEL FRIEDMAN,	:	75 Cr.
Defendants.	:	

- - - - - - - - - - - - - - - - - - - -x

The Grand Jury charges:

Introduction

1. AMREP CORPORATION (hereinafter referred to as "AMREP"), the successor corporation to American Realty and Petroleum Corporation and Great Sweet Grass Oils Company, is and was at all material times herein a corporation organized under the laws of the State of Oklahoma, with its principal place of business at 16 West 61st Street, New York, New York within the Southern District of New York.

2. RIO RANCHO ESTATES, INC. (hereinafter referred to as "RIO RANCHO") is and was at all material times herein a corporation organized under the laws of the State of New Mexico and a wholly-owned subsidiary of AMREP.

3. Rio Rancho Estates is and was at all material times herein a subdivision owned by RIO RANCHO and presently consists of more than 91,000 acres of semi-arid desert land, formerly a cattle ranch in Sandoval County, New Mexico.

4. A.T.C. REALTY CORP. (hereinafter referred to as "ATC") is and was at all material times herein a corporation organized under the laws of the State of New York, and a wholly-owned subsidiary of AMREP engaged in the sale of lots at Rio Rancho Estates, with its principal place of business within the Southern District of New York.

MH:rms
M-841

5. As of the date of the filing of this indictment HOWARD W. FRIEDMAN is President and a director of AMREP and RIO RANCHO and a director of ATC and was at all material times herein an officer and director of AMREP, RIO RANCHO and ATC.

6. As of the date of the filing of this indictment CHESTER CARITY is Executive Vice-President and a director of AMREP and RIO RANCHO and President of ATC and was at all material times herein an officer and director of AMREP and RIO RANCHO.

7. As of the date of the filing of this indictment IRVING W. BLUM is Chairman of the Board and a director of AMREP and RIO RANCHO and was at all material times herein an officer and director of AMREP and RIO RANCHO and a director of ATC.

8. As of the date of the filing of this indictment HENRY L. HOFFMAN is a director of AMREP and RIO RANCHO and until September of 1974 was Senior Vice-President of AMREP and RIO RANCHO and from October 1, 1974 up to and including the date of the filing of this indictment was and is a consultant under contract for AMREP and was at all material times herein an officer and director of AMREP and RIO RANCHO.

9. HERMAN B. OBERMAN was President of AMREP and RIO RANCHO in 1961 and a director of AMREP and RIO RANCHO in 1961 and 1962 and was at all material times herein an agent for AMREP and RIO RANCHO.

10. As of the date of the filing of this indictment SOLOMON H. FRIEND is Senior Vice-President, General Counsel and a director of AMREP and Vice-President of RIO RANCHO and ATC and a director of ATC and was at all material times herein from approximately 1970 an officer of AMREP and from approximately 1971 a director of AMREP.

11. As of the date of the filing of this indictment DANIEL FRIEDMAN is Senior Vice-President of Sales and a director of AMREP and Vice-President of RIO RANCHO and was at all material times herein from approximately 1967 an officer of AMREP and from approximately 1972 a director of AMREP.

12. This introduction is hereby incorporated and realleged in each and every count of this indictment as if fully set forth therein.

COUNTS ONE THROUGH SEVENTY

13. From on or about January 1, 1961, and continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC the defendants herein, and other co-schemers to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money in excess of $200,000,000 and property from purchasers of lots at Rio Rancho Estates by means of false and fraudulent pretenses, representations and promises.

I. The Objects of the Scheme and Artifice to Defraud

14. It was the principal object of this scheme to defraud for the defendants and co-schemers to acquire more than 91,000 acres of semi-arid desert grazing land in Sandoval County, New Mexico for approximately $180 per acre, to subdivide this desert land into approximately 86,000 lots of approximately one-half acre in size by bulldozing dirt roads and staking boundary corners, and to describe and to sell these lots as "homesite" and "commercial" lots in a "master-planned community" to persons throughout the United States at prices alleged to include water, utilities and other customary amenities which prices presently range from approximately $6,200 to $11,800 per acre for "homesites" and $3,150 to in excess of $25,000 for "commercial" lots, plus interest. The overwhelming majority of purchasers were intended to be and were persons who would not and did not

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purchase these lots except in reliance upon false and fraudulent pretenses, representations and promises by the defendants and co-schemers that such purchases were safe and secure financial investments which would appreciate rapidly and greatly in market value and could be resold at a substantial profit. (These purchasers are hereinafter referred to as "the persons to be defrauded.")

15. It was a part of the scheme and artifice to defraud that the defendants and co-schemers would and did cause lots in Rio Rancho Estates to be sold by means of high-pressure sales techniques which involved a variety of false and fraudulent pretenses, representations, promises and means which were designed and devised by them to mislead the persons to be defrauded to believe, among other things, that the purchase of "homesite" and/or "commercial" lots was a unique investment opportunity made possible by RIO RANCHO's "low mark-up policy"; that the "homesite" and "commercial" lots sold and offered for sale were being developed by defendants as part of their "master-planned community"; that Rio Rancho Estates was directly in the path of Albuquerque's growth; that Albuquerque was "bursting at the seams" and could only grow to and through Rio Rancho Estates; that building land in and around Albuquerque was scarce, thus assuring a brisk resale market for "homesite" lots and a demand for "commercial" lots at Rio Rancho Estates; that the "homesite" and "commercial" lots at Rio Rancho Estates would be easily resalable and certain to appreciate in resale market price; that these "homesite" and "commercial" lots at Rio Rancho Estates were a sound, virtually risk-free financial investment which would provide financial security for the purchaser's retirement, for the education of his children and for other financial objectives, all of which were false, fraudulent, and misleading as defendants and co-schemers

16. It was a further part of the scheme and artifice to defraud that the defendants and co-schemers would and did deliberately conceal and fail to convey to the persons to be defrauded information within the possession of the defendants and co-schemers which they knew would show that the purchase of "homesite" and/or "commercial" lots was not a sound risk-free financial investment, but was an exceptionally poor, risky, and dangerous investment; and, among many other relevant facts, the defendants and co-schemers failed to reveal and convey to the persons to be defrauded that they knew and believed that the overwhelming majority of these lots could not be resold at a profit, or even at cost, within any foreseeable future; that there had been virtually no resale market for these lots throughout the entire fourteen-year history of this scheme and artifice to defraud; that most purchasers wishing to resell their lots would not be able to sell them at all; that the defendants and co-schemers had not and were not improving the lots being sold with water, utilities and other customary amenities; that their "master plan" in no way assured that the lots sold would ever become part of a developed community; that the defendants and co-schemers had no intention of substantially or completely developing Rio Rancho Estates as a "master-planned community" at any time; that the defendants and co-schemers had no expectation that Rio Rancho Estates could be or would be completely developed in less than 200 years, if ever; that the defendants and co-schemers were selling the lots at Rio Rancho Estates in such a manner as to prevent or indefinitely postpone its development as a fully-developed "master-planned community," and that the growth of Albuquerque had not had and would not have any significant effect upon the demand for "homesite" and "commercial" lots at Rio Rancho Estates within any foreseeable future.

17. By all the false, fraudulent pretenses, representations, material omissions, and means employed, it was the aim of defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO, and ATC, to defraud the persons to be defrauded of sums in excess of $200,000,000.

II. The Means of the Scheme and Artifice to Defraud

18. Among the means by which the defendants and co-schemers would and did cause the aforesaid scheme and artifice to defraud to be carried out were the following:

(a) In approximately July, 1961, defendant HERMAN B. OBERMAN, as agent for defendant AMREP, entered into a contract to purchase a tract of approximately 54,000 acres of semi-arid desert grazing land in Sandoval County, New Mexico, at an average price of $178 per acre.

(b) In approximately August, 1961, defendants HERMAN B. OBERMAN, IRVING W. BLUM, CHESTER CARITY, HOWARD W. FRIEDMAN and HENRY L. HOFFMAN as executive officers and directors of defendant AMREP organized and caused to be organized defendant RIO RANCHO in order to take title to the 54,000 acre tract of land and, among other things, to subdivide and to engage in the sale of lots in Rio Rancho Estates.

(c) In approximately August, 1963, defendants HOWARD W. FRIEDMAN, CHESTER CARITY and HENRY L. HOFFMAN organized and caused to be organized defendant ATC in order to sell the lots at Rio Rancho Estates.

(d) Between August, 1969 and January, 1971, the defendants and co-schemers would and did cause defendant RIO

RANCHO to purcha[illegible] five additional tracts [illegible] and totaling approximately 37,000 acres, approximately 31,000 acres of which were purchased at an average price of approximately $180 per acre which land was contiguous to the original 54,000 acre tract and became part of Rio Rancho Estates.

(e) Beginning in late 1961 and at all material times herein, the defendants and co-schemers would and did cause the land at Rio Rancho Estates to be subdivided into approximately 86,000 lots of approximately one-half acre in size by bulldozing dirt roads and staking boundary corners, which lots were then described and sold and offered for sale as "homesites" and "commercial" lots in a "master-planned community" at prices which were represented to include water, utilities and other customary amenities.

(f) The defendants paid approximately $17,850,000 for the land comprising Rio Rancho Estates, and as of the date of the filing of this indictment, the defendants and co-schemers have sold approximately 77,000 lots to approximately 45,000 purchasers in approximately 37 states, generally under installment contracts requiring a down-payment and monthly payments plus interest charges over five to eight years for total sales, including interest, of more than $200,000,000; and the defendants and co-schemers are offering the remaining 9,000 lots for sale for a price in excess of $30,000,000.

THE SELLING TECHNIQUES

(g) From 1961 through in or about 1964, the defendants and co-schemers marketed the lots at Rio Rancho Estates through direct mail campaigns and through advertisements in newspapers, magazines and sales visits to the homes of the persons to be defrauded, and from in or about 1965 up to and including the date of the filing of this

Indictment, the defendants and co-schemers devised and did also devise and put into effect an elaborate, high-pressure sales campaign which was and is based upon false and fraudulent pretenses, representations and promises and which employed the following techniques and practices, among others:

i) the defendants and co-schemers would and did cause invitations to be sent through the mails offering recipients free dinners at restaurants during which sales presentations were made which were designed to induce the persons to be defrauded to sign contracts at said dinners for the purchase of lots at Rio Rancho Estates;

ii) the defendants and co-schemers would and did plan and devise their sales campaigns and dinner presentations in order to exploit any lack of financial sophistication and knowledge on the part of the persons to be defrauded concerning the making of reasonably secure financial investments;

iii) the defendants and co-schemers would and did design and devise their over-all sales campaign in order to induce the persons to be defrauded to buy lots at Rio Rancho Estates because of their alleged value as a financial investment and for the opportunity to resell the lots at substantial profits, and the defendants and co-schemers knew at all times that this was, in fact, the essential inducement to the overwhelming majority of sales made;

iv) the defendants and co-schemers would and did design and devise the pictures, films, promotional material and sales presentations, upon which the persons to be defrauded were expected

to [illegible]d did rely in making the purchase, so as to deceive the persons to be defrauded into believing that the purchase of lots at Rio Rancho Estates was a sound and profitable financial investment;

v) the defendants and co-schemers would and did cause the purchase of lots at Rio Rancho Estates to be represented as an "investment program" which offered the persons to be defrauded an opportunity to make a lot of money;

vi) the defendants and co-schemers would and did cause their salesmen to distribute "Confidential Surveys" at the beginning of the sales dinners which were designed to elicit information from the persons to be defrauded as to the maximum amount of money they could "invest" and which were further intended and designed to encourage the persons to be defrauded to remove moneys already invested in mutual funds, stocks, insurance and savings and to reinvest these funds in the purchase of lots at Rio Rancho Estates in order to provide the persons to be defrauded with financial security for their retirement, and for other purposes;

vii) the defendants and co-schemers would and did conceal from the persons to be defrauded information which indicated that the lots were a largely non-liquid, risky, and poor investment;

viii) the defendants and co-schemers would and did employ salesmen to sell lots at these dinners who were compensated solely on a commission basis and whom defendants and co-schemers

ined to be trained to maximize immediate "impulse" sales and to represent themselves as "land consultants" qualified to give knowledgable and disinterested investment advice, thereby discouraging and preventing the persons to be defrauded from consulting with lawyers or knowledgable financial advisors prior to signing contracts;

ix) the defendants and co-schemers would and did cause their salesmen to falsely represent that a specific "homesite" lot being offered was particularly valuable, was located in an especially "choice" area, and was generally a more desirable purchase than other "homesite" lots in the subdivision, whereas the location of a specific "homesite" lot was completely irrelevent since none of the "homesite" lots could be built upon, because they are without utilities and the only possible value a "homesite" lot might possess is to be used to exchange for a lot in the company's "building area" if a lot in the "building area" is available, as is explained in paragraph 18(o) below;

x) the defendants and co-schemers would and did cause their salesmen to falsely represent that the "choice" lots would be imminently sold out;

xi) the defendants and co-schemers would and did cause their salesmen to create a false impression of general agreement among everyone attending the dinner as to the immediate desirability of purchasing lots at Rio Rancho

) sales by training the salesmen to jump up and loudly and conspicuously to call "holds" on particular lots in order to falsely suggest that many sales were being made;

xii) the defendants and co-schemers would and did cause their salesmen to falsely represent that a "commercial" or "multi-dwelling" lot was a particularly valuable investment which would not only greatly appreciate in value but would also be income-producing, even though defendants and co-schemers at all times knew that the commercial and multi-dwelling lots could not be built upon because they are without utilities; and that such lots could not be exchanged for a lot with utilities and that there was no right of inspection or cancellation for such lots;

xiii) the defendants and co-schemers would and did cause their salesmen to falsely equate the price set by defendants for the lots with their value in the open market and to falsely represent that the lots should be immediately purchased at present prices because the lots were rapidly increasing in value;

xiv) the defendants and co-schemers would and did cause their salesmen to support claims as to the rapidly rising value of lots at Rio Rancho Estates by emphasizing the increases in sales prices of the lots which were arbitrarily declared from time to time by the defendants, without explaining that these arbitrary price increases bore no relationship whatever either to the cost of the land to the defendants or to any increase in resale market value, since there was no resale market and hence no

real market value, and these arbitrary price increases bore no real relation to "value" of any kind as that term is normally understood, and these price increases had been planned and declared by the defendants primarily so that they could be used to create a totally false impression as to rapidly rising market values of the lots sold;

xv) the defendants and co-schemers would and did cause their salesmen to represent to the persons to be defrauded that the "six month cancellation and refund privilege" guaranteed the return of all moneys, and this representation was made without disclosing to the persons to be defrauded that the costs involved to the persons to be defrauded in exercising this "refund privilege" would in most instances exceed the money paid on the contract during the first six months;

xvi) the defendants and co-schemers would and did require the purchaser to visit the subdivision in order to cancel and obtain a refund, and this was done for two purposes, (a) to discourage by reasons of inconvenience and expense many persons who were considering cancellation from seeking to obtain a refund, and (b) so that defendants and co-schemers could organize and operate carefully controlled and supervised tours during which they could and would both discourage cancellations and sell additional land to the persons on these tours by subjecting them to further and similar fraudulent sales presentations, and

by carefully supervising and controlling the movements and activities of the persons on these tours so as to prevent them from learning the actual condition of the real-estate market in and around Albuquerque;

xvii) the defendants and co-schemers would and did cause a movie to be used at their sales dinners called "Albuquerque's West Side Story" which movie purports to be produced by a civic organization and which emphasizes Rio Rancho Estates; and the defendants and co-schemers would and did cause this movie to be used without informing the persons to be defrauded that the movie had been produced and in large part paid for by AMREP and RIO RANCHO, and that prior to its use at sales dinners the movie had been significantly edited by the defendants and co-schemers;

xviii) the defendants and co-schemers would and did cause their sales dinner presentations to be organized in such a way as to carefully synchronize the use of written materials, movies, podium speeches and individual salesmen, who were strategically located at each table and assigned to small groups of potential purchasers; and it was this over-all synchronized presentation, and not merely its constituent parts, that was designed to and did deceive the persons to be defrauded concerning the quality of the land as a financial investment and other matters;

xix) the defendants were required to submit some of the written material, most notably the

deral "Property Reports" and New York State "Offering Statements" (hereinafter referred to as "Reports") to Government offices for review prior to use; however, this review did not, as the defendants and co-schemers well knew, constitute approval or verification by the Government offices that the statements contained in these Reports were true, reasonably complete, and not misleading or fraudulent; and in fact, as the defendants and co-schemers well knew, it was at all times a crime to represent or suggest that Government offices had approved or verified the truth or non-fraudulent nature of anything contained in these Reports both of which were required to be given to a purchaser prior to the signing of a contract;

xx) the defendants and co-schemers caused these sales dinner presentations to be organized and conducted so as not to call attention to the Reports; and the defendants and co-schemers caused salesmen to be trained to discourage anyone who noticed the Reports from reading them, and to give the Reports to the persons to be defrauded, if the Reports were given at all, concealed amongst promotional brochures;

xxi) the defendants and co-schemers would and did cause the information in the Reports and sales contracts which was significant and material to an individual's decision to purchase lots at Rio Rancho Estates to be ambiguous, incomplete, inaccurate, and

incomprehensible to a person of ordinary experience and understanding particularly as the information related to, among other things, the suitability of the lots as "homesites" and "commercial" lots; the availability of water; the company's obligation to provide water, utilities, and other customary amenities to the lots sold; the "exchange privilege"; and the availability and feasibility of providing water and utilities to the lots sold and offered for sale;

xxii) the defendants and co-schemers would and did cause the sales dinner presentations to be timed and planned in such a way as to make it virtually impossible for the persons to be defrauded to read and understand the contents of the purchase contracts prior to signing them;

xxiii) the defendant and co-schemers would and did cause their salesmen to prevent potential customers from removing any purchase contracts, Reports, or promotional material from the room where the sales dinner was held unless a sale had already been made to the purchaser;

xxiv) the defendants were required to file with the State of New York copies of advertising, promotional films, and literature used at dinner presentations in the State of New York although, again, this filing did not, as defendants and co-schemers well knew, constitute approval or verification by the State of New York that statements contained in the

advertising and promotional material were true, reasonably complete, and not misleading or fraudulent; and, in fact, as defendants and co-schemers well knew it was at all times a crime to represent or suggest that New York State had approved or verified the truth or non-fraudulent nature of anything contained in advertising and promotional material submitted for filing;

xxv) the defendants and co-schemers would and did cause their salesmen to falsely represent and suggest to the persons to be defrauded that New York State had not only approved and verified the truth and accuracy of the contents of these materials, but had also approved the oral presentations which in fact had never been submitted to or reviewed by New York officials;

xxvi) the defendants and co-schemers, as set forth above, devised and designed their over-all sales campaign in order to sell the land as a sound financial investment, and up until 1972 the written advertising materials and movies, as well as the oral presentations, blatently emphasized this investment theme; however in or about 1972, the defendants came to fear that they might have increasing difficulties with state and federal regulatory agencies if the written materials continued to blatantly emphasize the sale of "homesite" and "commercial" lots as a sound financial investment and accordingly, in or about 1972, it became part of the scheme and artifice to defraud that the defendants and co-schemers would and did

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review and revise their advertising materials and promotional movies so as to shade and qualify the language used concerning investment without, at the same time, weakening the real impact and effect of these materials as an inducement to financial investment, and without in any way inhibiting the sales dinner presentations from continuing to function as an over-all fraudulent inducement to purchase lots at Rio Rancho Estates for financial investment;

xxvii) the defendants and co-schemers would not and did not give reasonably complete and truthful information to salesmen and employees about the lots being sold, the assurance of water and other utilities, the character of the lots being sold as a sound financial investment, and other matters; and the salesmen and employees were, in fact, often misled themselves as to these and other matters by the defendants' training program and promotional material; and this lack of knowledge of complete and truthful information on the part of many salesmen and employees would and did further contribute to the misleading and fraudulent representations caused to be made to the persons to be defrauded;

xxviii) the defendants and co-schemers would and did operate some "investment seminars" separate from the sales dinners and designed to accomplish the same goals by employing many of the same fraudulent and misleading techniques;

xxix) the defendants and co-schemers would and did design and devise and cause letters and promotional material to be sent to the persons to be defrauded who purchased lots in order to induce them to continue to make payments on their lots and to purchase additional lots

and to lull them into a false sense of security by advising them, among other things, that their "investment" was rapidly increasing in value;

FRAUDULENT AND MISLEADING REPRESENTATIONS AND OMISSIONS OF MATERIAL FACTS

(h) From 1961 and at all subsequent times material herein the defendants and co-schemers, as the over-all thrust of their sales campaign would and did induce the persons to be defrauded to purchase lots at Rio Rancho Estates as a result of false and fraudulent pretenses, representations and material omissions which were designed to mislead the persons to be defrauded to believe that the purchase of these lots was a sound, virtually risk-free financial investment which could be resold at substantial profits.

(i) The defendants and co-schemers as a part of their sales campaign would and did make and cause to be made the following representations, among others, in promotional material, oral sales presentations, photographs and movies:

> "The history of land prices all around Rio Rancho Estates as well as Albuquerque proper over the past 20 years show prices doubling and redoubling again and again every few years."
>
> "In this booming resort area, where it has been typical for land prices to jump 200%, 300% even more in a few short years, you can control choice acreage worth thousands of dollars right now.....all you need is a small deposit."
>
> "In the past 20 years, land prices in the Albuquerque area have increased at a rapid pace, averaging about 25% per year but in many cases accelerating as much as 300 to 400% in a given year."
>
> "In the past when American Realty and Petroleum Corporation [AMREP] announced plans for a new community, prices on adjacent properties almost instantly jumped 100 to 300%."
>
> "Land values in the vicinity of Albuquerque have consistently risen by an average of more than 25% per year since 1941 -- and may climb even faster."
>
> "The most significant feature of RIO RANCHO ESTATES is the fact that it is in a region characterized by a prolonged rise in real estate values."

[The purchase of lots at Rio Rancho Estates provides:] "the chance of reaping future rewards with a relatively small speculative investment in an area where land values have shown a consistent tendency to steadily climb. It is a demonstrable fact that land prices in general in the Albuquerque area have increased 20, 30, even 50 times or more in the past 20 years."

"In general, it can be shown that land values in this area have been increasing at the average rate of 25% per year for the last thirty years! The above fact has profound implications for anyone who has ever invested money in any kind of enterprise from which he hoped to make a profit."

and statements of similar purport, thereby intending to mislead the persons to be defrauded to believe that the increases in land values in the Albuquerque metropolitan area were a valid basis of comparison to, and were indicative of, the increase in land values for lots at Rio Rancho Estates, and that the persons to be defrauded had every reason to expect the resale market price of a lot at Rio Rancho Estates to increase at a similar rate.

(j) the defendants and co-schemers as a part of and in the course of their sales campaign would and did make and cause to be made in written promotional material, oral sales presentations, photographs, slides and movie films, the following additional representations, among others:

an "investment" in lots at Rio Rancho Estates will yield a higher return to the persons to be defrauded than investing in stocks, bonds, pension funds, insurance or savings accounts;

an "investment" in lots at Rio Rancho Estates will assure the persons to be defrauded "a hedge against inflation", "financial security" and "security for the Golden Years ahead"

"the day to day facts of inflation are so grim and foreboding you owe it to yourself to find out more about land there [RIO RANCHO ESTATES] as a potentially protective investment for your rapidly eroding savings."

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an "investment" in lots at Rio Rancho Estates was "one of the surest and safest ways to make handsome returns on your investment."

"How to use the least amount of money to make the largest possible gains in land investment."

"only our low mark-up, large-volume policy makes such an outstanding land bargain possible."

"we believe that Rio Rancho represents potentially one of the most profitable investments anywhere in the nation"

"we feel quite safe in saying: if you acquire land holdings now at Rio Rancho Estates while our prices are still low, you have every right to expect that your land should rise substantially in value over the coming years"

"you may resell all or part of your property anytime you wish."

"your investment has resale value"

"while for really spacious living, or for selling off part later at an anticipated profit, many homesite purchasers are choosing full-acre sites"

"Albuquerque's growth offers you an opportunity to make a great deal of money."

"huge profits...have been made on the sale and resale of real estate in and about the City of Albuquerque over the past several years",

and statement of similar purport thereby intending to mislead the persons to be defrauded to believe that the purchase of lots at Rio Rancho Estates was a safe, sound and risk-free financial investment, and that the lots could be resold at substantial profits, thus assuring the persons to be defrauded financial security for their retirement, and other financial objectives.

(k) At the same time that the aforesaid statements, pretenses and representations set forth in parpagraphs 18(i) and (j) above, were being made, the defendants and co-schemers intentionally failed and omitted to make and cause

to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false and fraudulent:

i) the overwhelming majority of the persons to be defrauded would not be able to resell their land at a profit, or even at cost, within any foreseeable future;

ii) there had been virtually no resale market for the lots at Rio Rancho Estates throughout the entire 14 year history of this scheme and artifice to defraud;

iii) the overwhelming majority of persons wishing to resell their lots had not been able to sell them at all;

iv) the Multiple Listing Service of the Albuquerque Board of Realtors discouraged lot owners from listing lots at Rio Rancho Estates for resale because there was no local market for the land;

v) the defendants and co-schemers had purchased 54,000 acres of the land in 1961 for $178 per acre and had purchased an additional 31,000 acres for $180 per acre in the period from 1969 through 1971, and had already marked the land up as much as several thousand percent;

vi) from 1969 to 1971 the defendants and co-schemers were able to purchase the major portion of the remaining acres of their development, for an average price of $180 per acre, for a total increase in price over ten years of approximately 1%;

vii) in 1973 the defendant Rio Rancho made an application to purchase approximately 3,500

(x) s of state-owned land (x) in the boundaries of Rio Rancho Estates for $165 per acre which offer was based upon an appraisal prepared for and submitted by defendant RIO RANCHO estimating the market value of this state-owned property at $165 per acre which price was less than the amount the defendants had paid for virtually identical contiguous land twelve years earlier; the state appraised this land at $225 per acre which price the defendants rejected as too high;

viii) the defendants and co-schemers knew and believed that the overwhelming majority of lot purchasers did not intend to and would not move to Rio Rancho Estates, and would also be attempting to resell their land, and that each of the persons to be defrauded when he wanted to sell his land would be in competition with most of the other purchasers;

ix) other "developers" in the general vicinity of Albuquerque had subdivided and were selling hundreds of thousands of acres to many thousands of persons who would not move to the subdivisions, but who would be attempting to resell their land, and that this would create additional competition when the persons to be defrauded attempted to resell their lots;

x) the price of the lots did not reflect their value in the open market but reflected for the most part the exorbitant promotional costs necessary to sell the land;

xi) the defendants and co-schemers knew and believed that lots at Rio Rancho Estates could not be sold without the use of the selling techniques set forth in paragraph 18(g) herein and the fraudulent and misleading

misrepresentations and omissions of material facts set forth in paragraphs 18(j) through (q) herein.

(l) The defendants and co-schemers as a part of and in the course of their sales campaign would and did cause to be made in witten promotional material, oral sales presentations, photographs, slides, and movies, the following additional representations, among others:

> Rio Rancho Estates is located directly in the path of Albuquerque's growth;
>
> "What makes RIO RANCHO ESTATES a particularly fertile field for investment is its unique geographical location. It lies directly in the path of Albuquerque's inevitable future expansion. With the natural mountain barrier to the east and Government-appropriated land to the south, the most logical direction for major expansion is toward RIO RANCHO ESTATES! This alone would tend to assure the continued rise in value of land purchased at RIO RANCHO ESTATES."
>
> Albuquerque can only grow in the direction of Rio Rancho Estates;
>
> Albuquerque is "bursting at the seams";
>
> Albuquerque is experiencing a tremendous population explosion resulting in an increased demand for land, and an increased demand for "homesites" at Rio Rancho Estates;
>
> "with the population of Albuquerque expected to double and redouble every ten years with land reflecting an upward trend....newcomers are being forced by the law of supply and demand to pay higher and higher prices for choice homesite land"
>
> "Rio Rancho's unique location assures the continued rise in value of its land based upon such population growth"
>
> building land in and around Albuquerque is scarce and will be exhausted within two years;
>
> as the demand for land increases "homesite" lots at Rio Rancho Estates are rapidly increasing in value;
>
> "Now with Albuquerque's population predicted to almost double once again by 1980 or so--one does not have to be an expert to predict that land prices in our area should continue to reflect increasing population pressures...and perhaps at an even livelier pace as population pushes more and more into the growing Northwest Mesa neighborhood where Rio Rancho Estates is located!"

> "Many people at Albuquerque who are familiar with local real estate values and know the direction that Albuquerque's growing population must take in its search for homesites, are going out of their way to make monthly payments on 2 to 10 acre tracts...larger holdings which could lead to a sizeable retirement 'nest egg' if land values continues to double and redouble as they have over the recent past."

and statements of similar purport thereby intending to mislead the persons to be defrauded to believe that any growth of Albuquerque must necessarily be to and through Rio Rancho Estates, that within the foreseeable future Rio Rancho Estates was virtually certain to be absorbed and become a part of the City of Albuquerque, and that the local demand for lots from people who already lived in or who decided to move to the City of Albuquerque would inevitably create a demand for lots at Rio Rancho Estates and this demand would assure a brisk and profitable resale market for these "homesite" lots and a demand for "commercial" lots.

(m) At the same time that the aforesaid statements and representations set forth in paragraphs 18(i), (j) and (l) above were being made, the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false, and fraudulent:

i) all the material statements previously listed in paragraph 18(k) above;

ii) the growth of Albuquerque had not and would not have any significant effect on the demand for lots at Rio Rancho Estates;

iii) there was sufficient land in and closer to the City of Albuquerque than Rio Rancho

Estates to satisfy the needs of [illegible] range growth projections for the City of Albuquerque;

iv) Albuquerque was not growing at an increasing rate, but at a declining rate of growth;

v) there was little or no local market in Albuquerque for the sale of lots at Rio Rancho Estates;

vi) the defendants and co-schemers did not believe that Albuquerque would grow to and through Rio Rancho Estates and/or that Rio Rancho Estates would be absorbed within the built up area of the City of Albuquerque within the foreseeable future, if ever, and furthermore they did not believe that more than 5% of the purchasers would move to Rio Rancho Estates, or that Rio Rancho Estates would become fully developed at any time less than 200 years from now, if ever;

vii) Rio Rancho Estates was not the necessary or only possible direction in which Albuquerque could be expected to grow;

viii) the defendants and co-schemers received a report in 1966 from a land planning firm retained by them which indicated that the growth of Albuquerque would have no appreciable effect on the demand for lots at Rio Rancho Estates in the foreseeable future;

(n) From in or about 1961 up to and including the date of the filing of this indictment the defendants and co-schemers would and did hold out defendants AMREP and RIO RANCHO as "developers" and "community planners" who had a "master-plan" for the development of the lots sold and offered for sale at Rio Rancho Estates and the defendants

and co-schemers sold and did represent and cause the lots at Rio Rancho Estates to be sold and offered for sale as suitable and useable as "homesites" and for commercial purposes at prices which were to include water, utilities and other customary amenities and that these "homesite" and "commercial" lots were in a "master-planned community" of defendants AMREP and RIO RANCHO all of which was false, fraudulent and misleading as defendants and co-schemers well knew.

(o) At the same time that the aforesaid statements and representations in the preceding paragraph were being made, the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following material statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements that were made, in the light of the circumstances under which they were made, not misleading, false, and fraudulent:

i) the principal business of defendants AMREP and RIO RANCHO was to subdivide large tracts of land and to sell unimproved lots;

ii) the defendants and co-schemers had not and were not improving with water, utilities and other customary amenities the "homesite" and "commercial" lots being sold and offered for sale;

iii) the defendants' "master-plan" in no way assured that each individual "homesite" and "commercial" lot sold and offered for sale would ever become part of a developed community, nor did defendants intend to or consider themselves obligated to develop the individual "homesite" and "commercial" lots sold and

offered for sale contrary to what was represented and suggested by the films, photographs, brochures, tours and descriptions of the small developed portion of the company-owned "building area";

iv) the defendants and co-schemers were selling the land in such a way as to prevent or indefinitely postpone its development as a fully developed "master-planned community" since the defendants and co-schemers knew and believed that most purchasers would not build but would hold their lots for resale at a profit, that there was no resale market and no reasonable expectation of a profitable resale market in the future, and that the overwhelming majority of the lots were virtually certain to lie empty and undeveloped for the indefinite future;

v) the lots sold and offered for sale could not be used as "homesites" or for commercial purposes and there was no other use to which this land could be put;

vi) the defendants and co-schemers did not believe and had no reason to believe that the "commercial" and "multi-dwelling" lots sold and offered for sale would be at any time in the foreseeable future surrounded by the type of contiguous development necessary in order for a lot to have commercial use;

vii) the lots sold and offered for sale were arid desert lots, without water and utilities and improved only by dirt roads;

viii) in the overwhelming majority of cases utilities were many miles away from the lots sold and offered for sale;

ix) extension policies of utility companies precluded the overwhelming majority of the persons to be defrauded from obtaining utilities for their lots;

x) the persons to be defrauded would not be able to build on the lots they purchased;

xi) it was not practical or economically feasible for the persons to be defrauded to drill wells for water or to extend utilities to their lots;

xii) if the persons to be defrauded were able to obtain utilities, the persons to be defrauded, not the defendants, would have to bear the cost of extending utilities to their lots;

xiii) the defendants and co-schemers were only placing utilities in company-owned "building areas";

xiv) lots in the "building area" which had utilities were only available by means of the "exchange privilege" to "homesite" owners who were ready to build a home;

xv) only a single half-acre "homesite" lot could be exchanged for a lot in the "building area";

xvi) the "exchange privilege" usually resulted in added cost to the persons to be defrauded for a smaller piece of land and required the persons to be defrauded to retain any land in excess of a single half-acre;

xvii) there was no right to exchange a "commercial" or "multi-dwelling" lot for a lot with utilities in the "building area";

xviii) there was no right to exchange a "ranchette" for a lot or lots in the "building area";

xix) utilities were only being placed in company owned "building areas" based upon demand;

xx) the defendants and co-schemers knew and believed that the demand for lots in the "building areas" would be limited and did not set aside sufficient land in the company-owned "building areas" so that each "homesite" lot sold could be exchanged for a lot with utilities;

xxi) although the defendants and co-schemers represented that their so-called "master-plan" made provision for schools, churches, shopping centers, swimming pools, and many other recreational and community facilities to be located throughout the entire subdivision, they were not, in reality committing themselves to provide any such facilities at any time in the future; and furthermore the defendants had made provisions to shift to the lot purchasers the cost of maintaining the few such facilities which had been built in the small company-owned "building area."

(p) the defendants and co-schemers as a part of and in the course of their sales campaign would and did make and cause to be made in photographs, slides, films, promotional materials and sales presentations the following representations among others:

> "Water. Water is the key to Southwest growth. Thanks to our dream location, with 3 miles of frontage right on the river ... and every inch of property within the Rio Grande Basin itself ... We can tap all the ground water we need to make living really attractive for you at Rio Rancho Estates."

"WATER -- Even though water is sometimes a problem in the Southwest, it's good to know that Albuquerque is abundantly supplied. At Rio Rancho we have an underground system with enough water for a community many times our present size. And if the community should grow beyond our estimates in the next few years, all we have to do is sink another well and draw more water from the vast underground streams below, because most of Rio Rancho is located in the water-rich Rio Grande Basin.

But that's not all. Recently, the Bureau of Reclamation opened the valves marking the completion of the $84.5 million San Juan-Chama project which brings water from Colorado River tributaries beneath mountains under the Continental Divide into the Rio Grande. The vastly increased water supply for Albuquerque furnishes an additional basis for industry to move here."

"The completion of the San Juan-Chama Diversion Project, virtually guarantees the Albuquerque-Rio Rancho area a water supply for at least 100 years."

"Rio Rancho Estates is blessed with an abundance of soft, delicious water -- more than enough to fill every community need -- which runs through one of the finest water systems in the entire Southwest."

and statements of similar purport thereby intending to mislead the persons to be defrauded to believe that water could not possibly be a problem with respect to the development of Rio Rancho Estates which was false, fraudulent, deceitful and misleading as defendants and co-schemers well knew and believed.

(q) At the same time that the aforesaid statements and representations in paragraph 18(p) were being made the defendants and co-schemers intentionally failed and omitted to make and cause to be made and conveyed to the persons to be defrauded the following statements of fact which defendants and co-schemers knew and believed and which were necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, false and fraudulent:

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i) the defendants can not tap all the ground water they need nor can they simply sink another well and draw more water;

ii) the defendants must own water rights before they can drill for water and the transfer of a water right must be approved by the State Engineer of New Mexico;

iii) the defendants do not presently own sufficient water rights to fully or even substantially develop Rio Rancho Estates;

iv) the defendants have no legal assurances that they can acquire sufficient water rights to support a fully or even substantially developed subdivision at Rio Rancho Estates;

v) the San Juan-Chama Diversion Project does not guarantee Rio Rancho any water much less a water supply for 100 years;

vi) the defendants and co-schemers requested an allotment of water from the San Juan-Chama Diversion Project for Rio Rancho Estates and did not receive an allotment;

vii) the fact that the City of Albuquerque has an abundant supply of water does not in any way guarantee water for Rio Rancho Estates;

viii) the City of Albuquerque does not provide water to Rio Rancho Estates;

ix) the defendants only intend to provide central water, if at all, to the company-owned "building areas";

x) the depth to water for the lots sold and offered for sale ranges from 400 to 1,480 feet;

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xi) is not practical or economically feasible for an individual lot owner to drill a well;

xii) the cost of drilling a well including casing and equipping, but not including the cost of pumping, presently is $10 to $18 a foot;

xiii) the persons to be defrauded can not reasonably obtain water for the lots sold and offered for sale;

xiv) under present state regulations in New Mexico a "homesite" owner can not drill for water and have a septic tank unless the lot is at least three-quarters of an acre in size and the overwhelming majority of "homesite" lots at Rio Rancho Estates are one-half acre;

xv) the purchase contracts for "commercial", "multi-dwelling" lots and "ranchettes" do not obligate the defendants to provide water and utilities to these lots nor do they permit an exchange of these lots into the building area;

xvi) contrary to such assertions as those made in paragraph 18(p) above, among others, the defendants and co-schemers do not know and are not in a position to represent to the persons to be defrauded that they can and will provide water to the lots sold and offered for sale and/or that they can and will be able to provide an exchange lot with water for each lot sold and offered for sale.

19. On or about the dates hereinafter set forth in the Southern District of New York, HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC the defendants for the purpose of executing

the scheme and artifice to defraud as alleged in paragraphs 1 through 18 hereinabove, and attempting to do so, unlawfully, wilfully and knowingly did place and cause to be placed in post offices and authorized depositories for mail matter and did cause to be delivered by mail according to the directions thereon matter to be delivered by the United States Postal Service, as more particularly set forth below:

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
1	5/9/75	Rio Rancho 3900 Southern Blvd, Rio Rancho, New Mexico 87124	Samuel A. Kaufman 185 East 162 St. Bronx, N.Y. 10451	Letter
2	1/12/71	Rio Rancho P.O. Box 1516 Albuquerque, New Mexico	Mr&Mrs. Ernest Feig 585 West End Ave. N.Y., N.Y. 10024	Letter
3	9/18/72	Ethel&Samuel Louis 321 Boone St. Piqua, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
4	8/8/73	Clarence A. Thorne Fallon, Nevada	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
5	5/20/71	Mr.&Mrs.Clymer 600 Linderson-way, Tumwater, Washington	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
6	12/15/72	ATC RealtyCorp. 1790 Broadway New York, N.Y.	Mrs. Lillian Sender 964 East 102 St. Brooklyn, N.Y. 11236	Letter
7	6/20/75	Austin&Annette Oppedisano 6 Fourth St. Farmingdale, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
8	6/25/75	Mr.&Mrs.Minch 1953 Rockford Rd. Indianapolis, Indiana	Chemical Bank P.O. Box 5357 Church Street Station N.Y., N.Y.	Paymen

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
9	5/17/72	ATC Realty Corp. 16 West 61 St. New York, N.Y.	Leslie&Joyce Eggers 2545 East 64 St. Brooklyn, N.Y.	Letter
10	11/18/71	John P.&Dorothea Paulson, 254 Collfield Staten Island, N.Y., N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
11	8/21/72	Donald&Mildred Berrie, 43 Lafayette Sea Cliff, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
12	9/25/73	Bernard&Patricia Billoch 3548 Arden Blvd. Youngstown, Ohio 44511	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
13	4/71	Mr.&Mrs.Ogg 1356 Connecut Ave. Bowling Green, Ohio 43402	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
14	10/9/75	Jeanne Norris 126 Park Street West Pittston, Pennsylvania	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
15	9/15/75	Milton&Ida Freundlich 3101 Ocean Pkwy. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
16	6/19/75	David Jones 140-21 Queens Blvd. Jamaica, N.Y. 11435	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
17	10/28/71	Robert&Constance Accinni 61 Oceanside Rd. Rockville Center, New York 11570	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
18	3/73	Glory Banks 155 East 38 St. New York, N.Y. 10016	Chemical Bank P. O. Box 5257 Church Street Station N.Y., N.Y.	Payment
19	9/12/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Hilda Morse 173 Riverside Drive New York, N.Y. 10024	Letter

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
20	9/15/75	Finnen, DelCampe & Cantano 917 Sunrise Ave. Bellmore, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
21	5/22/75	Vincent&Luciano Porto, 48-15 44 Street Woodside, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
22	5/15/74	James Rovito 2848 Colonial Ridge Ct. Cinn. Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
23	11/9/71	Morris&Florence Gusowsky 600 Rincon De Romos, Rio Rancho New Mexico	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
24	6/4/71	Gustave&Joanna Mols, 4712 La Contara Ct. Rio Rancho New Mexico	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
25	10/10/75	Antonio&Olive Reyes-Guerra 50 Winter Hill Rd. Tuckahoe, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
26	8/10/73	Riley Bryan Route 1 Colon, Michigan	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
27	1/11/72	Elizabeth Raimann 651 No. Terrace Ave., Mt. Vernon, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
28	9/18/75	Max&Blanche Glass 1085 East 22 St. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

COURT	DATE	SENDER	ADDRESSEE	MATTER OR THING
29	9/23/75	Billy Sisco Box 26C Gold Camp Rd. Colorado Spring, Colo.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
30	10/9/75	Carl&Neva Falk 186 Paul Court Hillsdale, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y, N.Y.	Payment
31	5/5/71	Louis&Sylvia Crifo 25-36 73 Street Jackson Heights	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
32	7/2/73	Gary Kulp Blackberry Lane RD1, Box 185 Malvern, Pa. 19355	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
33	11/28/72	Aldo&Ruth Petrillo 249 Long Pond Dr. South Yarmouth, Mass.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
34	5/12/72	Mr.&Mrs.D.Butler 48 Hoffman Lane Blauvelt, N.Y. 10913	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
35	2/24/72	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Mr&Mrs. Orland Credintino 311 Elwood Ave. Hawthorne, N.Y. 10532	Letter
36	7/1/75	Steven&Louisa Adler 133 Governors Rd. Lakewood, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
37	10/11/72	ATC Realty Corp. 16 West 61 St. New York,N.Y.	Mr&Mrs. James Di Domenico 1465 West 5 St. Brooklyn, N.Y.	Letter
38	8/16/74	Richard W. Gray 55 Lawrence Pl. Orchard Park N.Y.	Chemical Bank P.O. Box 5257 N.Y., N.Y.	Payment
39	6/74	John&Arlene Duffy 465 Colon Ave. Staten Island, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station	Payment

COURT	DATE	SENDER	ADDRESSEE	MATTER OR THING
40	4/19/72	Rio Rancho 3900 Southern Blvd. Rio Rancho, New Mexico 87124	Zarko Dabovich 940 North Serrano Ave. Los Angeles, Calif.. c.c. ATC Realty Corp.	Letter
41	4/4/72	ATC Realty Corp. 16 West Street New York, N.Y.	Irving A. Fullick 247 Parkview Ave. Bronxville, N.Y.	Letter
42	6/3/75	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Mr&Mrs. James Christiano 2 Rock Ridge Dr. Port Chester, N.Y. 10573	Letter
43	2/10/75	Adam&Jadwiga Sporzynski 17516 Neff Rd. Cleveland, Ohio	Chemical Bank P.O: Box 5257 Church Street Station N.Y., N.Y.	Payment
44	6/12/75	Joseph&Vivian Speetjens 30 Holly Place Torrington, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
45	2/72	A. Ramadan 1945 Kennedy Blvd. Jersey City, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
46	6/16/75	Harry&Malvina Schlau 121 Lakeland Ave. Sayville, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
47	6/13/75	Sylvester Mizell P.O. Box 110 Greenwich, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
48	11/27/73	Rio Rancho 3900 Southern Blvd. Rio Rancho New Mexico 87124	Ms. Constance M. Paterno 707 Van Nest Avenue Bronx, N.Y.	Letter

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COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
49	1/24/73	Mr.&Mrs. Browner 3688 Tiona Lane Oceanside, Long Island	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
50	1/2/75	ATC Realty Corp. 1790 Broadway N.Y., N.Y. 10019	Mr.&Mrs. Myer Pepkin 2285 Bragg Street Brooklyn, New York	Letter
51	10/11/72	Mr.&Mrs. Seil 48 Ferndale Blvd. Islip, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
52	3/18/71	Mr.&Mrs. Miller 3315 Nostrand Ave. Brooklyn, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
53	6/20/75	Robert G. Wagner Route 3 Bucyrus, Ohio	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
54	10/28/74	Mr.&Mrs. Switt P.O. Box 182 Browns Mills, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
55	1/8/71	Robert Gaudette 84-50 127 Street Kew Gardens, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
56	7/31/72	Mr.&Mrs. Baczynski 210 St. Benedict Lane Florissant, Missouri	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
57	7/75	Mr.&Mrs. Slocum 301 Ridge Rd. Oriskany, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
58	8/4/72	Americo G. Passaretti 193 Gibson Ave. Brentwood, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
59	2/19/74	David Ramirez 94-31 46 Ave. Elmhurst, N.Y.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

COUNT	DATE	SENDER	ADDRESSEE	MATTER OR THING
60	4/19/73	Mr.&Mrs. Martinez 213 West 53 St. N.Y., N.Y.	Rio Rancho Estates 3900 Southern Blvd. Rio Rancho, New Mexico	Letter
61	1/24/74	Ellen Eilhauer 32-37 42 St. Long Island City, N.Y.	Leonard Geller ATC Realty Corp. 1790 Broadway N.Y., N.Y.	Letter
62	2/1/73	AMREP Corporation 16 West 61 Street N.Y., N.Y. 10023	Mr.&Mrs. John D. Schmeider 459 King Street Staten Island, N.Y.	Letter
63	2/23/73	Secretary of State of the State of N. Y.	Amrep Corp. 16 West 61 St. N.Y., N.Y.	Letter
64	12/30/71	Edward Dwyer P.O. Box 75 Shady, N.Y.	Dan Monaco ATC Realty Corp. 16 West 61 St. N.Y., N.Y.	Letter
65	9/17/73	Secretary of State of the State of N. Y.	AMREP Corporation 16 West 61 Street N.Y., N.Y.	Letter
66	6/9/75	Mr.&Mrs. Miller 15 Chestnut Hill Drive Toms River, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
67	7/3/75	Mr.&Mrs. Hampe Box 473 Middlefield, Conn.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment
68	6/28/72	ATC Realty Corp. 16 West 61 St. New York, N.Y.	Mr.&Mrs. Wilbur Pack 220-01 138 Rd. Springfield Gardens, N.Y.	Letter
69	3/6/73	ATC Realty Corp. 1790 Broadway N.Y., N.Y.	Mr.&Mrs. Leon Schwartz 1189 East 56 St. Brooklyn, N. Y.	Letter
70	7/8/75	Mr.&Mrs. Joseph Schiller 25 Tulip St. Cranford, N.J.	Chemical Bank P.O. Box 5257 Church Street Station N.Y., N.Y.	Payment

(Title 18, United States Code, Sections 1341 and 2.)

COUNTS SEVENTY-ONE THROUGH EIGHTY

The Grand Jury further charges:

1. From in or about April, 1969, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC and co-schemers, all of whom were at all times material to this indictment "developers" and "agents" as defined in Title 15, United States Code, Section 1701(4)(5), would and did directly and indirectly by the use of the means and instruments of transportation and communication in interstate commerce and of the mails in the sale of and the offer to sell lots in Rio Rancho Estates, unlawfully, wilfully and knowingly, employ a device, scheme and artifice to defraud; and engage in transactions, practices and courses of business which operated and would and did operate as a fraud and deceit upon the persons to be defrauded to whom said defendants directly and indirectly would and did attempt to and did sell and offer to sell lots in Rio Rancho Estates.

2. The allegations contained in paragraphs 14 through 18 of Counts One through Seventy of this indictment are repeated and realleged as though fully set forth herein as constituting and describing some of the means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC committed the offenses charged in paragraph 1 of Counts Seventy-One through Eighty.

3. Among the other means by which the defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, and co-schemers would and did commit the

offenses charged in paragraph 1 of these Counts were the following:

a) the defendants and co-schemers would and did cause telephone calls to be made to the persons to be defrauded to invite the persons to be defrauded to sales dinners; to confirm the attendance of the persons to be defrauded at sales dinners; to make appointments to visit the persons to be defrauded in their homes; and to confirm information regarding sales that were made at sales dinners and in the homes of the persons to be defrauded;

(b) the defendants and co-schemers would and did cause the purchase of lots at Rio Rancho Estates to be advertised on radio and television for the purpose of having the persons to be defrauded contact the defendants by mail and telephone so that the defendants and co-schemers could make a sales presentation to the persons to be defrauded.

4. On or about the dates hereinafter set forth in Counts Seventy-One through Eighty in the Southern District of New York, and elsewhere, defendants HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, SOLOMON H. FRIEND, DANIEL FRIEDMAN, AMREP, RIO RANCHO and ATC, unlawfully, wilfully and knowingly did use and cause to be used the means and instruments of transportation and communication in interstate commerce pursuant to and in furtherance of the offenses alleged in paragraph 1 of these Counts as hereinafter set forth:

COUNT	DATE	MEANS AND INSTRUMENT
71	November 22, 1974	WOR-TV
72	November 18, 1974	WPIX-TV
73	November 25, 1974	WNEW-TV
74	November 23, 1974	WABC-TV
75	March 25, 1975	WCBS-TV
76	March 28, 1975	WNBC-TV
77	March 26, 1973	WINS-Radio
78	April 3, 1973	WHN-Radio
79	July 6, 1973	WCBS-Radio
80	April 7, 1972	Telephone

(Title 15, United States Code, Section 1703(a) and Title 18, United States Code, Section 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

OFFICIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE

Federal Trade Commission

DOCKET NO. 9018

In the Matter of:

AMREP CORPORATION,
NEW YORK, NEW YORK

Place Washington, D. C.

Date October 30, 1975

Pages 146 thru 224

Alderson Reporting Company, Inc.

Official Reporters

300 Seventh St., S. W. Washington, D. C.

NA 8-2345

C O N T E N T S

NONE

E X H I B I T S

NONE

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BEFORE THE

FEDERAL TRADE COMMISSION

IN THE MATTER	
of	Docket No. 9018
AMREP CORPORATION, NEW YORK, NEW YORK	

Room 7314, Federal Trade Commission
414 Eleventh Street, N.W.
Washington, D. C.

Thursday, October 30, 1975

Met, pursuant to notice at 3:00 p.m.

BEFORE:

DANIEL H. HANSCOM, Chief Administrative Law Judge

APPEARANCES:

PERRY W. WINSTON, Attorney for the Federal Trade Commission, Los Angeles Regional Office.

THEODORE R. SCHREIER, DAVID WALDMAN, and I. DAVID PARKOFF, 16 West 61st Street, New York, New York 10023, Attorneys for Respondent, Amrep Corporation.

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P R O C E E D I N G S

JUDGE HANSCOM: The conference will come to order.

Let me say that I called this conference because I felt that since last June when we had a conference the case had made some progress but maybe not as much as I would have liked. We have to assess the status of the case. My intention is to set down some dates for further proceedings and actual hearings of the case-in-chief. That is my intent today.

I have written down a few points that I want to explore, and I will hear from all of you on it.

I think first I want to find out from complaint counsel what is the state of complaint counsel's preparation? What I am thinking of is, have you completed your pre-trial preparation, what remains to be done, how long will it take, and at what point are you going to be able to turn over your case, so to speak, to respondent? I am thinking in terms that that all probably can be done without very much more time elapsing. I am thinking of setting a hearing date for the case-in-chief, and I might say I am contemplating a reasonable interval between the case-in-chief and the case-in-defense to give respondent a further opportunity for preparation. I guess that is basically my overall thinking.

Before I hear from you, Mr. Schreier, I would like to hear from complaint counsel as to all the things that I mentioned.

MR. SCHREIER: I would like to report some shocking news. My co-counsel, Mr. Friend, in what I consider an outrageous injustice, last Tuesday was indicted in a companion case to this one in the Southern District of New York. I think it is an abuse of prosecutorial discretion to have indicted an attorney and not to distinguish between principals and attorneys. I don't think the principals have done anything calling for indictment or even calling for an FTC complaint.

I really do not know where I am going to be going in view of the criminal indictment in this case.

Originally Your Honor denied our application for a delay.

JUDGE HANSCOM: Yes, and the Commission sustained my ruling.

MR. SCHREIER: We appealed that and that is presently pending before Judge Pierce in the Southern District.

JUDGE HANSCOM: I am aware of that. I have not been enjoined.

MR. SCHREIER: I understand that. We have been

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proceeding with the case, and the shocking news that came on Tuesday just sort of flooged all of us. I had called Mr. Winston shortly before, the week before I learned that Amrep would be indicted, but I never suspected that my co-counsel would be indicted. I just wanted to make that announcement at the beginning. We can proceed from there.

JUDGE HANSCOM: I appreciate knowing that. I saw a headline or at least an item on the front page of the Times, but, believe it or not, I did not read it because I did not. Although I am not a Jury, I try to avoid anything in the newspapers relating to any case that I am handling. So I just didn't read it. So I don't know what it said.

MR. SCHREIER: I appreciate that, Your Honor. I just announce this not as a part of this case but to say that the defense of this case is a little nonplussed at this point in time because it is only two days since the indictment of my co-counsel.

JUDGE HANSCOM: I understand that, but there is nothing that we are going to do today that will put instant time pressure on you. Actually, I might as well tell you I am thinking of complaint counsel starting their case-in-chief in February. February 10 is a kind of arbitrary date. It can be moved. I have to fit this into

my other cases, too. Before we reach any date, obviously I am going to hear from Mr. Winston and from you. We will turn now to Mr. Winston.

MR. WINSTON: Our discovery is taking longer than we indicated at the initial pre-trial, in part because we under-estimated the magnitude of the case. But I believe primarily because of the continual requests for extensions of time to comply with the subpoena.

JUDGE HANSCOM: When you say discovery do you mean from everybody?

MR. WINSTON: From us.

JUDGE HANSCOM: Respondent's discovery from you?

MR. WINSTON: That can probably be done at the same time that we are proceeding with our discovery.

JUDGE HANSCOM: Wait. We are not on the same wave length. You said your discovery is taking longer than you anticipated.

MR. WINSTON: Right.

JUDGE HANSCOM: My question was, is it your discovery from respondent that you are referring to?

MR. WINSTON: Yes.

JUDGE HANSCOM: I agree. There have been extensions of time. I have granted those for various reasons. That was all supposed to be over on October 17. I believe that was the date. Wasn't that the date that I finally extended the time?

MR. SCHREIER: October 24, Your Honor.

MR. WINSTON: If I might continue with the subpoena, the piecemeal manner in which we were given documents has made it difficult for us to inter-relate documents that have to be read together. It is sometimes difficult to understand those documents. For example, we obtained some computer readouts but we did not get the translations to the code. We had to obtain those from counsel later. During that interval of time there was not much that we could do with the documents to start preparing our case from it.

Also, I understand that the last box of documents was delivered on the 24th of this month. I just got a call from my counsel back in Los Angeles that they have not read the documents. However, we have found from our analysis of those documents to date that there are some omissions in the specifications.

For example, in Specification No. 2 we received information only from a few of the sales subsidiaries. Amrep has numerous sales subsidiaries, and we expected a much greater return. These were documents where people would write in complaining about the practices of the salesmen and we wanted to see in response to that whether the company took some sort of corrective action against that person. We feel this is really not complete because companies do

get complaints and action is taken.

Another example is Specification No. 3. We were supposed to receive by agreement "Sales Procedure Manuals." We have not received them.

Specification No. 19 also calls for various manuals in addition to sales training aids. We have not received them, either.

We know that they exist. In fact, we know from a document that was submitted during the course of the subpoena, called Office Procedures Manual, which we received in the subpoena return. At Page 301, which notes that it was revised on November 1972, is the quote: "The dinner party is the center of our highly specialized selling system." This document makes further reference to (1) the Amrep Recruiting and Supervision Manual, (2) the Amrep Training Guide, and (3) the Training Manual. These are cited at Pages 1038, which was revised November 1973, and at Page 702, which was revised November 1974.

We agree that Amrep's dinner parties are specialized. We feel they are too specialized to be learned by word of mouth. Therefore, we want these manuals and it is very important to our case.

These are just examples of a few omissions that we found.

We are now compiling our records. We are looking at the documents. We are trying to come up with a total list of apparent omissions from documents that were cited by the documents we did get and covered by the subpoena but not yet delivered during the course of the subpoena return.

After reviewing these documents and submitting a report, either we could submit a report to Your Honor explaining the compliance with the subpoena or we could deal with respondent's counsel and write them a letter, with a copy to you, explaining what further materials we feel are owing to us as a result of the subpoena and the agreement reached in that subpoena.

Also, on Specification No. 6 by the agreement we reserved the right to hold this particular specification back until we got a chance to review all the documents obtained. I am speaking without knowledge of what was contained in the last box.

There is one thing that we feel we do need and we would like to invoke it under Specification No. 6. What we want is the production of the "internal engineering studies of work to be performed and estimated cost to perform such work, including anticipated cost inflation," as referred to in the SEC Form 10K as of April 30, 1975 at Note G on Page 9 of the notes to the financial

statements. 126a

In the event these studies do not reflect the magnitude of the development budget to fully develop the approximately 91,000 acres of Rio Rancho Estates, then we will require additional engineering studies to show this total development.

This material, in addition to being covered under Specification No. 6 of the original subpoena, we believe is also covered under Specification No. 11 of the subpoena.

Additionally, we have found it necessary to ask for certain documents that have not been subpoenaed before by a new subpoena we will be shortly filing.

JUDGE HANSCOM: This is distressing to me, Mr. Winston. At this late date I am astounded you are still seeking additional information from respondent.

MR. WINSTON: If you might let me continue I will explain the circumstances as to why we need the additional information.

JUDGE HANSCOM: Very well, continue.

MR. WINSTON: The request would reflect information regarding the sale by one purchaser from Amrep to a third party of his contract to buy vacant land from Amrep at the projects Rio Rancho, Silver Springs Shores, and Eldorado at Santa Fe.

We have been informed by experts that we have employed in this case that since these contracts are not recorded with the counties in which the land is located, they cannot get information on re-sales of the contracts themselves. Through the counties they can get information on re-sales where the property has been properly deeded and recorded, but this is one area where they are unable to get information that would be relevant to any testimony they might give regarding the investment value of the land.

It was only until this week that we found out they needed such information and that they couldn't get the information on the re-sales of those contracts. It is only under these circumstances that we ask for any additional information other than that encompassed by the original subpoena.

JUDGE HANSCOM: I think the way to proceed is for you to file a paper as soon as possible stating what it is that has not been produced in accordance with the subpoena which I issued, and then I think respondents must come up with this information within a short time thereafter.

MR. SCHREIER: Your Honor, we feel we have complied fully with the subpoena. If documents that we have supplied refer to additional documents not covered

by the original subpoena and a new subpoena is served, we will comply with the new subpoena. But we have fully complied with that subpoena. Every document named was found. We complied with our agreement fully. Mr. Waldman is here. He worked on it. He assures me that that is the case.

JUDGE HANSCOM: What do you say to that, Mr. Winston?

MR. WINSTON: We are in disagreement on that. We feel that the subpoena was fairly all-encompassing in the areas where we needed relevant information, that the agreement in some respects limited that subpoena but didn't dispose of it at all.

JUDGE HANSCOM: In a sense it doesn't seem very material to me if you are going to comply with a new subpoena.

MR. SCHREIER: We will comply to the letter, Your Honor. This is the first I found out about the claim of non-compliance.

JUDGE HANSCOM: Does the dispute swirl over alleged non-compliance rather than production of documents?

MR. SCHREIER: Yes.

JUDGE HANSCOM: Very good. In that event, file your papers. When can you file your papers?

MR. WINSTON: We can file that paper within two weeks.

JUDGE HANSCOM: All right. No sooner? Is it going to take you two weeks? You seem to have it all in notes in front of you. Will it take two weeks?

MR. SCHREIER: Your Honor, there was a big box of material which we furnished at the last day, on the 24th, which they probably didn't get until this morning.

MR. WILSON: We got it less than an hour ago. I just spoke with the rest of complaint counsel and they were going through it to see whether the information in the last box corrected some of our problems. They indicated that they still believe that there are omissions and that we should bring these to the forefront and have them disposed of.

JUDGE HANSCOM: Very well. You file this paper on the record within two weeks. That would be by November 13. You are going to file a paper in which you advise respondent Amrep of your opinion that material that was encompassed by the subpoena has not been produced. I recognize that respondent Amrep disputes that characterization of it. So, you can file an answer saying, "We complied in our view, but the key point is if you want the documents we are supplying them."

MR. SCHREIER: Very well, Your Honor.

I would like to say, Your Honor, the FTC has been working on this case for three years. The Grand Jury

has been working on this case for 20 months. We have an FTC complaint. We have answered many subpoenas. Now we have an indictment. I still don't know what this case is about. I haven't had the first bit of discovery in the case. I think I am entitled to some discovery now. I don't know what this case is.

JUDGE HANSCOM: You have filed a motion for discovery and I am coming to that this afternoon.

Let us assume that complaint counsel files this on or before November 13, two weeks thereafter you can comply with the additional request of complaint counsel.

MR. SCHREIER: I can try. I would have to know what the requests are.

JUDGE HANSCOM: In view of past performance I think obviously -- let me say --

MR. SCHREIER: I feel right now, Your Honor, two weeks is reasonable.

JUDGE HANSCOM: That is my feeling.

MR. SCHREIER: I feel it may not be.

JUDGE HANSCOM: Let us not go through another series of requests of an additional two weeks, and so forth. We will set a date two weeks thereafter, or before, when you will turn over to Mr. Winston all the material that he wants unless there is some unusual problem, in which event bring it to my attention. You may file a

motion or something like that.

MR. SCHREIER: Very well.

JUDGE HANSCOM: I hope there will not be. I trust that Mr. Winston will use good judgment here. This could go on forever seeking more documents and then these documents refer to other documents and you want more documents and we will never get to trial if you continue in that fashion.

By the 28th of November.

Assuming that works out satisfactorily, what else do you have to do, Mr. Winston, before you will be able to go to trial?

MR. WINSTON: Since I brought up the matter of experts, there is something I should bring out, I believe.

It is necessary for them to visit certain parts of Amrep subdivisions in order to survey and inspect these parcels. I think technically it might be a trespass. I would like that there be some arrangements made with respondent giving us permission for our people, who to this point remain unidentified, to be able to go upon the land to survey certain parcels, to inspect those parcels, and then to leave the premises.

JUDGE HANSCOM: Mr. Schreier.

MR. SCHREIER: Very well.

JUDGE HANSCOM: How will that be handled?

15 1 let's do all of this.

2 MR. SCHREIER: May I ask that the experts be

3 identified before they come on our land and also I would

4 like to request a copy of the report subsequent thereto.

5 JUDGE HANSCOM: What is your answer to that,

6 Mr. Winston?

7 MR. WINSTON: I don't believe it is really

8 a proper time to disclose anything short of the time that

9 we give out our witness list. I can't see any pressing

10 reason.

11 MR. SCHREIER: It has been three years.

12 I think at some point in time we have to know what this

13 case is about. Three years is a long time.

14 JUDGE HANSCOM: Without engaging in controversy,

15 which I don't want to do, you have a complaint here which

16 is fairly detailed, so you do know what this case is all

17 about.

18 MR. SCHREIER: Your Honor, it is conclusionary.

19 I want to know what did we do wrong on any one item. If

20 that is the heart of the complaint, what is wrong with a

21 dinner party? Is it too dark? People can't read at

22 the dinner party? Let him tell me what is wrong with the

23 dinner party.

24 JUDGE HANSCOM: What you want is the evidence.

25 MR. SCHREIER: I want to know what the complaint is.

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I think that if he says a dinner party is the FTC complaint, I don't have to introduce any evidence. I can demur and I can say that is the end of it. There is nothing wrong with selling things at a dinner. I have never heard of anything wrong with that. If that is his complaint, then I don't have to put in any contrary evidence. If there is something wrong once you get to the dinner, I think I am entitled to know it. I am not saying I want to know it three years ago, but I think after three years I should know it.

JUDGE HANSCOM: I agree with you. You will know it. That is one of the points that I wish to pin down today, if possible.

MR. SCHREIER: I think I should know the names of his experts who are coming on my land because I might want to have contrary experts going on at about the same time. I would like to look up their credentials. I think that is only fair.

JUDGE HANSCOM: Mr. Winston, you write a letter to Mr. Schreier naming the persons you wish to visit the developments and the dates. Mr. Schreier, you answer that and if the dates aren't agreeable, of course you can arrange dates between you.

MR. SCHREIER: Very well.

JUDGE HANSCOM: A copy should be filed on the

record. I want this all on the record. You don't need to put the original on the record and then have it served on Mr. Schreier. Just send it directly to him but put a copy on the record. You can attach a little identification saying pursuant to my instructions the letter to respondent's counsel is filed.

At some point Mr. Schreier is entitled to the report whether you use it or not. I am not fully clear in my own mind at what point.

MR. WINSTON: Your Honor, I might add it is possible we are not going to have a report. After the experts familiarize themselves --

JUDGE HANSCOM: In other words, they will familiarize themselves and then testify?

MR. WINSTON: Yes. It is possible what they do for us will involve just oral testimony.

JUDGE HANSCOM: Then Mr. Schreier can interview them.

MR. WINSTON: Right.

JUDGE HANSCOM: If they render a report to you then I think Mr. Schreier should get a copy of that.

MR. SCHREIER: And do I understand Your Honor to say if they do not render a report, I will be able to examine them before trial on their findings?

JUDGE HANSCOM: Only in this respect. I wasn't

thinking of a deposition.

MR. SCHREIER: An interview?

JUDGE HANSCOM: Yes. At some point complaint counsel is going to provide a list of all his witnesses to you. At this point then I assume that ordinary trial prudence would cause you to contact most of those people. It is usually done one way or another. Also complaint counsel will give a summary of the testimony expected from his witnesses. Maybe in some instances you won't contact them.

MR. SCHREIER: Of course, if I do contact a witness, the witness is under no obligation to speak to me. That is the problem.

JUDGE HANSON: I realize that.

Have you any objection to having Mr. Schreier interview your experts?

MR. WINSTON: I have no objection, but as a matter of timing, certainly, I don't want them interviewed before they have made an inspection of the land.

MR. SCHREIER: Certainly not -- subsequently.

MR. WINSTON: It always has been my intention that they have a right to talk to each and every one of my witnesses before the trial. I think that is just standard.

JUDGE HANSON: It is true, however, as Mr. Schreier stated, that in some instances the witness may not want to talk.

MR. WINSTON: It is possible, but in my communications with these people, they have indicated generally that they would talk to Counsel for the other side.

MR. SCHREIER: Your Honor, if it turns out Mr. Winston is not going to use one of these experts as a witness, for whatever reason, I think I would like to talk to them, too.

JUDGE HANSCOM: You will have the names.

MR. SCHEIER: Do I understand I will have the names of witnesses and experts?

JUDGE HANSCOM: Yes.

I think, at the time Complaint Counsel files a list of their witnesses and the documents they intend to offer into evidence, at that point, they shouldalso file any report made by an expert to Complaint Counsel, such expert having visited the land. At that point, you ought to have the report, whether Complaint Counsel plan to use it or not.

MR. SCHEIER: They have a funny procedure now in the government, and I want to make sure I am not being hoodwinked.

JUDGE HANSCOM: I am not hoodwinking you.

MR. SCHEIER: Not you, Your Honor. There are procedural manuals now which teach government Attorneys how to avoid the Jencks rule and how not to write things down. They don't take statements from people any more.

They introduce them and then it is covered by work product. Subsequent to the meeting, they write this down. I don't want that type of thing to be happening here.

Have I made myself clear?

JUDGE HANSCOM: I think I follow you, but what

we were talking about was where the expert submits a report to Complaint Counsel.

MR. SCHEIER: If the expert submits an oral report to Complaint Counsel and Complaint Counsel subsequently types up a memorandum of that report, I would like to have that memorandum, Your Honor. I think that is only fair.

MR. WINSTON: We may get into the area of work product.

MR. SCHEIER: That is exactly the idea.

MR. WINSTON: The work done by Complaint Counsel with real estate experts in trying to look at the factors objectively and see how they fit into this case in chief -- that unless an expert-Attorney situation, and I don't know that we should really delve into that -- if we supply the name of the people and a general description of what they will testify to, if it is not perfectly obvious -- obviously, they are going to testify about the investment value of real estate. They are going to appraise the property. If that is not enough and then he has to write to depose them and if for some reason they refuse to talk, certainly those are adequate forms of discovery other than to want to get documents and reports submitted back and forth between Counsel and these experts.

MR. SHAKER: I don't think that is sufficient,

Your Honor. I think this is not work product. This is in advance we are talking about.

The government does it every day. It is a subterfuge to avoid the Jencks rule and to deny discovery to Respondents.

JUDGE HINSON: I think I have a solution to this.

After the expert visits the development, Complaint Counsel will be listing the witnesses he intends to call. If that expert is listed as a witness, at that point Complaint Counsel will be required to turn over any report he has submitted to Complaint Counsel. If there is no written report, or if there is a contention that the report was oral and it is Complaint Counsel's impression and that is work product, I am going to require that if any such expert is listed as a witness, Complaint Counsel provide a detailed summary of the testimony to be expected from each witness, and I will exclude testimony which is not fairly within the scope of the detailed summary.

So, you will be protected. You will know what they are going to say.

In other words, we are not going to have a rather conclusionary summary of testimony in the case of an expert who hasn't rendered a report. The summary of the testimony will be in sufficient detail to put you on notice of what the expert will say.

MR. SCHEIER: That is fair, Your Honor.

However, I would like to add to that, that in the event they don't use this expert as a witness, I would like the same summary of the expert's testimony, because I might want to use this person as a witness since he has been on our property and examined the property.

JUDGE HANSCOM: I am not going to go that far. I will simply say that we will reserve what action is appropriate and proper in the case of an expert who examines your land and then is not listed as a witness by Complaint Counsel. We will see what happens.

If you can interview that individual, then you will know what he could say and possibly you can subpoena him yourself, or maybe nobody wants to call him.

If a problem develops, I will meet that problem when it develops.

What is next?

MR. WINSTON: The next would be requests for admissions. We have already started on a first request for admissions. The subject is primarily the control of Amrep, the parent, over numerous subsidiaries.

We have used best efforts to seek a stipulation on this point, because we don't really feel it should be contested.

However, we were unsuccessful. This first

request for admissions will set out those factors that we believe will put the Counsel for Respondents in the position where they have to admit or deny, according to the Commission's rules, certain degrees of control.

JUDGE HANSCOM: When do you plant to file your requests for admission?

MR. WINSTON: That can be filed also within two weeks.

JUDGE HANSCOM: All right.

The response to the requests for admission is covered in our rules.

MR. SCHREIER: Yes, Your Honor.

JUDGE HANSCOM: You mentioned earlier that you wanted to apply for a new subpoena?

MR. WINSTON: That can also be done within the same two weeks, since it will have only the one specification.

JUDGE HANSCOM: What else?

MR. WINSTON: There will be a second request for admissions after we fully digest all the material submitted in the subpoena return, including the documents that may be obtained as a result of the report that we will file, the letter to Mr. Schreier. We really don't know how long this would take since we only got the last submission, but you might --

JUDGE HANSCOM: I can't set a date for a second

request for admissions. That is too hypothetical.

I will issue an order on this conference, of course, and I will state that the second request for admissions will be filed as soon as the first is disposed of, without delay.

MR. WINSTON: Yes.

The next part of our discovery -- and the last -- would be depositions. Some of the documents that we have obtained, even with code translations and other materials read as a whole, make little sense to us, being on the outside of the company.

In order to understand those documents and in order to get some information that we did not obtain from the documents as we expected, it will be necessary to depose certain individuals within the company regarding in particular the organization, the development of the subsidiaries, the sales policies and marketing policies of Amrep and its subsidiaries.

One of the things that we received in the subpoena return were the minutes to the Board of Directors and the Executive Committee meetings.

In those documents, we felt we could see how the company operated internally as regards --

JUDGE HAMILTON: May I interrupt for a moment.

Why are you seeking depositions? Why don't

you simply call these people as witnesses?

MR. WINSTON: In order properly to prepare our case, we would like to know in advance what the answers to some of those questions would be.

JUDGE HANSCOM: Suppose the answer is not what you want, what are you going to do then?

MR. WINSTON: We will know. If we don't really know what the answer is, I think we should ask the questions to get out in the open our lack of knowledge.

JUDGE HANSCOM: Why don't you interview them?

MR. WINSTON: Our conversations with Counsel for the Respondent have indicated that they are unwilling to talk to us and that Counsel would be unwilling to allow an employee to talk.

We have had conversations, of course, with --

JUDGE HANSCOM: Is that the case?

MR. SCHEIER: Mr. Friend made reference to this at an earlier meeting. We had some substantial problems in view of the grand jury and the indictment. I am sure some of the people he is talking about have already been indicted. Their personal privilege against self-incrimination is to be considered, and they have personal Attorneys. So, I would say it is a fair statement that people at the higher level would not want to be interviewed, except under compulsion.

JUDGE HANSCOM: What are you going to do about that, Mr. Winston?

The way you are going, my feeling is, I don't know when this case will ever get to trial. If they are indicted, they are going to resist any depositions. That is obvious, isn't it?

They may invoke constitutional immunities of various sorts.

I have no idea.

MR. WINSTON: There may be people within the organization who have not been indicted and who possess the knowledge that we need for our case. Hopefully, it would be those people that we would depose.

There are procedures for requests for immunity. There are various ways to handle the situation. We would like to explore those, because the questions are so important in this proceeding.

JUDGE HANSCOM: I am certainly not ruling you out. It is simply a matter of the time that this is taking. How many depositions are you concerned with?

MR. WINSTON: I think, if we got three people, knowledgeable in the areas that I brought out, they would satisfy all that we want.

JUDGE HANSCOM: If these individuals have not been indicted, is there an objection to Mr. Winston's interviewing

them?

MR. SCHEER: Not on the part of the corporation. However, the Grand Jury is still sitting, and it would be up to each individual to determine for himself whether he would want to speak to anybody from the government.

The U. S. Attorney for the Southern District has told us that the investigation is continuing.

JUDGE HANSCOM: If you wish to depose individuals, you will have to make the showing required by Section 3.33 of the Commission's rules. I will have to look at your application and make a decision accordingly.

When you file that --

MR. WINSTON: We could file that not within the same two weeks as we have the other deadlines, but most probably within five weeks.

JUDGE HANSCOM: This takes us up to the early part of December, December 4th.

MR. WINSTON: Your Honor, before filing something official like this, I think it makes a great deal of sense that whil I am on the East Coast on this trip, I could go to New York and talk to people who have not been indicted and get a preliminary feeling as to whether they would invoke the Fifth Amendment, or whether they possess the requisite knowledge to speak about these areas.

JUDGE HANSCOM: That is an excellent suggestion,

I think. This is what I want you to do.

MR. SCHEIER: I welcome Mr. Winston in New York at any time. However, we do have some problems because this is a period of looking forward to interviewing Attorneys. There were seven individuals indicted and three corporations indicted. We are interviewing Attorneys, preparing motions to the indictment.

We are just a little tied up at the present time, x-ally, to accommodate Mr. Winston.

JUDGE HANSCOM: Do you know when you would like to interview?

MR. WINSTON: If I had a chance to confer with my colleagues I could come up with several names.

Right now I can think of a few, but I would like to make sure that they are the most appropriate persons.

JUDGE HANSCOM: Why don't you do that. It is possible that Mr. Winston could be satisfied by talking to somebody that isn't indicted.

MR. SCHEIER: I have no objection to that.

JUDGE HANSCOM: This is possible. All I can suggest is that you do this as soon as possible. You are speaking of today or this week?

MR. WINSTON: On, this trip, this week.

JUDGE HANSCOM: Very good.

Then consult with your colleagues in Los Angeles.

Is that what you are talking about?

MR. WINSTON: Yes.

JUDGE HANSCOM: Get the names and get to Mr. Schmier with those names and see if you can work something out. If it can't be done, then you will have to apply for a deposition. Maybe you can avoid that by interviewing people.

MR. WINSTON: That is correct.

As far as our discovery, that should take care of our problems in obtaining what we believe we need.

JUDGE HANSCOM: What do you envision, then, as to further proceedings? When will you turn over your case to respondent and when will you be able to commence the case in chief? What is your time table?

MR. WINSTON: The exhibit list can be turned over to them within five weeks, I believe.

JUDGE HANSCOM: From now or five weeks from the time you depose people?

What did you mean by five weeks?

MR. WINSTON: Maybe I ought to give a date certain instead of projecting.

Say by the middle of January we turn over an exhibit list listing those documents we feel will be introduced into evidence. It will take us awhile to do this

because we don't want to get duplicative material, repetitive things. We want to get the best document to make the point.

With that exhibit list we will provide copies of documents that did not come from respondent, unless it was something that we had to purchase.

Then we will indicate where the purchase can be made by AMREP.

JUDGE HANSCOM: What about your list of witnesses?

MR. WINSTON: The list of witnesses is a little more difficult because we add to and subtract from -- people die; people can't be found. I would say by the middle of February we could provide names, current addresses, even phone numbers, and a statement of expected testimony.

Let me change that.

I can do that by February 1.

On that list will be included, of course, those people who would testify as experts.

However, I might also add we do not intend to put on that list people that we have spoken to during the so-called three years that we have chosen not to put on as witnesses.

JUDGE HANSCOM: I realize that.

This is a list of witnesses.

MR. WINSTON: Right.

JUDGE HANSCOM: Then you would be able to go to

trial at some point?

MR. WINSTON: I believe March 1 we could go to trial.

JUDGE HANSCOM: How long do you anticipate your case in chief will take?

MR. WINSTON: It should take about the length of time we originally anticipated, roughly three months.

JUDGE HANSCOM: Where would it be held?

MR. WINSTON: There will be some slight changes from our original estimate because things didn't work the way we thought they would.

I believe there will be four weeks in Albuquerque; one week in Santa Fe; about half a week in Branson, Missouri; a half week in Kansas City, Missouri; and a half week in St. Louis, Missouri; in Ocala, Florida, approximately two and a half weeks; then New York City would be five weeks.

I don't know what that totals up to. We always think of it as three months.

MR. SCHREIER: That is pretty close.

JUDGE HANSCOM: Is there anything else?

MR. WINSTON: I believe that is all I have to report on discovery and anticipated trial dates.

I was so far wrong the first time on anticipated trial --

JUDGE HANSCOM: It wasn't entirely your fault. In

fact, maybe not at all. Extensions were asked for and granted. To some degree -- but at any rate, it is very difficult to bring cases of this sort to trial; it has been my experience.

Now let us hear from Mr. Schreier.

MR. SCHREIER: I don't know what his case is.

I can't tell you how long it willtake me.

JUDGE HANSCOM: I can issue an order and we can proceed and he can start the case in chief on March 1st, which is not too far wrong. I was assumingabout February 10th.

MR. SCHREIER: I have no objection to March 1st provided I can get some discoveryprior to that time.

JUDGE HANSCOM: What is the discovery you want?

I, of course, have gone over your discovery request.

Is it something additional?

MR. SCHREIER: I don't know.

JUDGE HANSCOM: Let's take that up.

The way I have viewed your motion for discovery, it comes down to this: Your interrogatories in effect ask for complaint counsel to specify all the documents which tend to support various allegations of the complaint. You are going to have all that around the end of January or the middle of January. I think he said by the middle of January he would file all the documents.

So, you will have his whole documentary case. You will have that. You are going to have all his witnesses.

What is your discovery request in effect asking for in addition to that which you are going to get?

You are getting the discovery by the middle of January or February 1st in the case of witnesses. You are seeking, if I interpret the papers correctly, both what you have said and what Mr. Winston has said, the names of everybody complaint counsel has contacted, whether he chooses to call them as witness or not.

MR. SCHREIER: We didn't ask for the names, Your Honor.

In other words, I don't know what his intention is, but let's assume he has 30 witnesses who say AMREP is a rip-off and he has another 30 who say AMREP are honorable people, that they make good deals, that they do what they say they are going to do. I have no way of knowing that. I don't think it is fair for me not to know it.

JUDGE HANSCOM: In effect, what you are asking, it seems to me, is all the documents relating to the case.

MR. SCHREIER: Good or bad.

JUDGE HANSCOM: Good or bad, which complaint counsel has.

MR. SCHREIER: Plus what he got from us.

He asked me for surveys. There are some surveys

that say we are fantastic; there are others that say we are not. I didn't just give them surveys favorable to AMREP.

I honored the subpoena, and I think he should do the same for me.

JUDGE HANSCOM: Before you say anything, Mr. Winston, I am not sure that I have gotten the issue on your motion for discovery out before all of us.

Is it a fair statement that you are seeking all the documents in the files of complaint counsel bearing on this case which he is not planning to use as evidence?

I am trying to capture it in synthesis.

MR. SCHREIER: I am seeking all those documents which he is not planning to use which I can use.

JUDGE HANSCOM: Of course, you have to look at them, don't you?

MR. SCHREIER: Yes.

JUDGE HANSCOM: In effect, you are getting all the documents. You are seeking all the documents which he has in his files realting to this case that he isn't going to use. I am excluding internal correspondence or memorandums.

MR. SCHREIER: When he subpoenaed my files, he didn't tell me he was going to subpoena material he was going to use. He subpoenaed material he probably is not going to use. I think I should have the same right.

JUDGE HANSCOM: Aside from whether you should have

it or not, it seems to me that the result of your interrogatories would require complaint counsel to identify every document that tended to support any of the allegations.

MR. SCHREIER: May Mr. Waldman speak to these questions? He is far more familiar with it.

MR. WALDMAN: If I may, Your Honor, the complaint is replete with allegations by various written and oral statements, in various publications, through other means, directly or by implication, that AMREP has done certain things or has committed certain acts which the FTC believes to be unfair acts or practices.

I refer Your Honor to paragraphs 7, 9, 11, 13, 18, 20.

JUDGE HANSCOM: I have the complaint.

MR. WALDMAN: All we want to do is just to clear up those ambiguities and those generalities in specific paragraphs of the complaint in order to know what oral statements we made.

Just as complaint counsel has asked for items by specification in his subpoena, we ask for those oral statements by paragraph number of the complaint.

Surely complaint counsel during the three years of his investigation has an enormous amount of material upon which the complaint is predicated.

In effect, we are asking for something similar to a

bill of particulars, something that will clear up the ambiguities and specify what the other means, indirection, or what oral statements complaint counsel is referring to.

It is entirely reasonable that if his complaint is based on these materials, we should be entitled to know what those oral statements and the like are.

MR. WINSTON: If I might speak to that, Your Honor, --

MR. WALDMAN: I had not finished. I just took a breath.

The complaint covers over 40,000 business transactions with over 90 subsidiaries involving more than 2300 employees. In the mass of individual transactions that has occurred, it seems that we are entitled to specificity as to which of those transactions complaint counsel deems objectionable.

JUDGE HANSCOM: You are going to have all that. You are going to have his case. You are going to know exactly what he thinks proves the allegations of the complaint.

What more do you want?

You will have his case.

MR. WALDMAN: We want to start getting it, Your Honor.

JUDGE HANSCOM: You will have it in January. You will have his case. You will know exactly what he has that he contends proves the allegations of the complaint.

If his material doesn't prove it, then, fine, as far as you are concerned. YOu will be on notice as to exactly what you will have to meet.

MR. WALDMAN: When I read the prior transcript, on page 72 you indicated you were inclinded to allow AMREP's discovery to commence simultaneously.

JUDGE HANSCOM: I wanted to do that. I am surprised it hasn't been done. I wanted the two to go together to save time.

MR. WALDMAN: That is what we are asking, Your Honor, in the interrogatories.

JUDGE HANSCOM: It comes down to what you have asked for in your interrogatorites.

Taking Interrogatory Number 1, you have asked him to identifyall the documents -- I will skip some things -- indicating that during the time a customer is making payments pursuant to respondent's reservation and purchase agreement, that purchasers do not during the term thereof have any rights of ownership and cannot use the lot so purchased thereunder as alleged in paragraph 4 of the complaint.

Okay; you are asking for all the documents that indicate this fact as alleged; right?

MR. WALDMAN: Yes, sir.

JUDGE HANSCOM: You are going to get all the documents that complaint counsel contend support that

allegation of the complaint.

You are not entitled to those documents which complaint counsel isn't going to use in evidence. In other words, you are not entitled to ransack, if I may use that word, the files of the Commission.

There are many cases that establish that.

MR. WALDMAN: Of course, Your Honor.

JUDGE HANSCOM: There are Commission cases that say that. Allied Chemical, just for one.

I brought a quote in here. Allied Chemical, 75 FTC 1055-1057, 1969, states:

"Respondent wants all statements made by all persons interviewed in connection with the case, * * * whether or not these relate to complaint counsel's case."

The Commission goes on to say they are not entitled to that.

MR. SCHREIER: We do want what is producible under the Jencks rule. That we do want.

JUDGE HANSCOM: What I am trying to get at is, as far as documentation is concerned, I do not see that you are entitled to what you, in effect, are demanding in your motions for discovery as far as writings are concerned. In effect, you are seeing everything in the files. That is the net of it.

You may deny that and I am simply using shorthand to try to indicate to you what I think it is that over-all your motion for discovery amounts to. It is all the files relating to this case.

Although it may be limited in some particulars, over-all I think that is a fair estimation of it, regardless of whether complaint counsel is going to offer it or not.

The Commission discovery rules don't go that far.

MR. WALDMAN: I understand what you are saying.

I think there are two threads interweaving. One is the thread that we are entitled to the evidence that substantiates the complaint.

JUDGE HANSCOM: You are going to get that.

MR. WALDMAN: There is no problem with that. We would like to get it as soon as rather than later. But that we have no problem with.

The other thread interweaving is the pervasive thread, to my mind, of obtaining reports and analyses and surveys by export witnesses. That we have taken care of in our earlier colloquy.

JUDGE HANSCOM: Yes.

MR. WALDMAN: I believe we are harmonized.

The purpose of the interrogatories was not to achieve all evidence or all documents, not to ransack the Commission's files, as you stated before, but, rather, just to

have knowledge of and copies of evidence that will be introduced.

MR. SCHREIER: We still have the Jencks rule, sir.

JUDGE HANSCOM: Excuse me.

In effect, are you agreeing with me?

MR. SCHREIER: Yes.

MR. WALDMAN: Yes.

JUDGE HANSCOM: When complaint counsel turns the case over to you, you have it.

MR. SCHREIER: Except for the Jencks Act items, Your Honor, which they are not going to introduce which we may use.

JUDGE HANSCOM: That is much easier, it seems to me, for me to resolve.

Number 1, if complaint counsel have any statements signed by a witness or a person on his witness list, if complaint counsel has any statement signed by them or affidavits, of course, or letters signed by that witness, then you are entitled to those. It is only a question of when you are entitled to them.

Then there is a second category, so-called interview reports, where there may be statements in substantially verbatim form of somebody called by them as a witness. If complaint counsel resists turning over those interview

reports, then, of course, under the accepted procedure I would have to examine them and make a decision whether they are in substantially verbatim form and, if they are, make them available to you.

Technically, if we follow the procedur literally after the direct examination, of course, that would be done.

The question I have is, I can't really see why complaint counsel couldn't turn over any statements, affidavits, and communications from people on his witness list when you file the witness list. Of course, I would more or less think you could do it ahead of time except that you don't know right now who your witnesses are going to be.

Have you any comment on that?

MR. WINSTON: I was trying to think back how many statements we have. We have a limited number of statements.

I am naturally reluctant to give something away until I am legally required to give it away. I think I could probably get back to you on the point.

JUDGE HANSCOM: I am not making any final rulings here and now at this instant.

My thought is that when you file a list of your witnesses, I can't really see any reason why you should not accompany the witness list with all the statements or communications from anybody on the witness list, so if there is

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a John Jones on the witness list, if he has given you a statement and signed it, that would accompany the witness list. Of course, if he has given an affidavit, that would accompany it. If he has written you a letter in which he said, "Such and such happend to me", or "Mr. Winston, this is what I experienced", or whatever it is, where the statement originates from the witness, I can't see your not disclosing an informant or violating a confidence.

It seems to me once you put aman's name on the witness list, he knows he is going to have to testify unless you later cancel him out.

MR. WINSTON: I really would like to get back to you on the point.

I am not even sure how many such statements exist.

JUDGE HANSCOM: Or communications or letters?

MR. WINSTON: Communications; anything that would be a substantially verbatim statement.

JUDGE HANSCOM: They would be if they are over the signature of the witness. They are his statement. Not substantially. We are talking about actual statements of a witness in some particular or other. Maybe theydon't cover the whole range of the testimony, of course. It may be on a very limited point. He may say, "I bought Lot so and so" -- period. That may be all he said, but it is a statement of the witness.

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MR. WINSTON: One thing comes to mind in my experience with consumers like this.

Unless we have notified the people who have written youletters in advance that we were having to turn over these documents, these letters, they might feel somewhat misled or a breach of confidentiality on the part of the Government or in some say feel that their rights were infringed upon, so to speak, by their Government.

I am concerned with that attitude which I have seen.

If it is a Jencks statement that is required to be turned over by law, then we have no discretion at all, but if it is a matter of convenience for the other side --

JUDGE HANSCOM: It is a question of time, as I see it. That is all.

At the time the witness testifies, you are going to have to produce anything over his signature bearing on his testimony. The substantially verbatim statements come into focus when you are considering interview reports or memorandums of interviews which were made inthe course of investigating the case. In that event, there may be an issue as to whether the statement is substantially verbatim, and I will have to look at it to see whether it is a subjective interpretation of counsel as to what the witness would say or whether it is the witness's statement. So, we are just talking

about a matter of time.

As I understand the procedure, if we followed it literally, that is, Star Office Machine, Balfour and other cases of the Commission, all of this would be disclosed to you, Mr. Schreier, at the conclusion of the testimony of the witness on direct.

But, I would prefer to do it ahead of time simply to provide you with an opportunity to see -- of course, you are going to have statements of the witnesses' testimony. You are not going to come in in the dark.

MR. SCHREIER: I appreciate this, Your Honor.

MR. WINSTON: It is possible some of the exhibits will also be those that relate to witnesses.

MR. SCHREIER: With respect to the exhibit list, I wonder if I could get that in partial instalments as opposed to waiting for a complete list in January, if it is all right with Mr. Winston.

As he knows he is going to use an exhibit, if he could let me know prior to giving me a list on January 15, 1976, I would appreciate that. Then I could be working on it. It would save some time and it would save the court some time.

MR. WALDMAN: Your Honor, mechanically we would be able to submit the interrogatories and have them signed, and then Mr. Winston would be able to deliver us the exhibits pursuant to the interrogatories as he knew he was going to use

something at the trial. So we would have a serial delivery of exhibits precipitated.

JUDGE HANSON: In effect, you are asking him to allocate all his exhibits to particular portions of the complaint.

MR. WALDMAN: Which is no more than he asked us to do pursuant to the subpoena.

MR. WINSTON: We have different things.

A document may relate to any number of complaint paragraphs.

We are prepared to write out a description of why we intend to submit that in general, but it would be a monumental task to take the 10k report and go through it and point to statements in the 10k, cite them to particular complaint paragraphs. It should be all too clear. Once they see the exhibit list, in many cases, 80 per cent of the documents willbe there on documents and they know what they mean.

The complaint is somewhat general, but it is really not that difficult.

We have companies selling land representing them to be good values, and the Commission complaint indicates that it is an unfair practice because they didn't necessarily turn out that way. I don't see that we should be required to relate that to all the complaint paragraphs.

MR. WALDMAN: We would be able to live with the

primary purpose.

For example, if Mr. Winston knows today he is going to be using the 10k primarily for one purpose, to substantiate one item of the complaint and perhaps for other paragraphs, it seems to me we should be able to know what his primary purpose is today and any ancillary purposes either we can fathom ourselves or as he discloses he could tell us.

JUDGE HANSCOM: I think we are in agreement.

MR. WINSTON: A description.

The primary purpose would be exactly what we would be giving you.

MR. WALDMAN: And ancillary purposes as you discover them so the interrogatories are implemented now, and you would be under the same burden pursuant to the interrogatories as we were under the subpoena.

MR. WINSTON: Then our task would never end.

MR. WALDMAN: No more than ours.

JUDGE HANSCOM: Two people can't talk at the same time.

MR. WINSTON: For instance, in the SEC 10k form there is a section on each of their subdivisions. It makes numerous statements about how large it is, how many lots are in it, how many lots have been sold, how many lots are under contract but not complete deeded, how many are deeded.

Information like that relates to almost all of the complaint paragraphs. It goes to maybe whether this is a good investment. It goes to whether AMREP is running out of land. Also, various things that their own literature states. It should be all too clear once we put in the document.

I might add, on bulky documents we will designate those pages that we feel are particularly relevant. We will put the whole document in but say pages 1 through 2 are not really put into evidence, only for the purpose of looking at it as a whole.

The 10k form is going to contain possibly some financial statements that we really don't want to get into, that are not necessary to our case. We will be able to delete those pages or make a notation on the exhibit list, itself, that we are relying only on certain pages of this bulky document.

Perhaps tht will solve your problem.

MR. WALDMAN: I don't think that is good enough. We are getti,g back to a mystery program.

MR. SCHREIER: We don't want to be surprised.

JUDGE HANSCOM: You won't be surprised. You will have his whole case in January. You will have all the documents. You can read the complaint. You are good lawyers.

MR. SCHREIER: If you take a 10 k with some thousands of pages, if he doesn't isolate those pages that he is going

to use --

JUDGE HANSCOM: He will. He said he would identify the pages.

I would require him, in any event, on a voluminous document, to identify the pages or the portions which he is offering, as a matter of fact. I have no intention of receiving a massive document as a whole, just as generally relevant. I wouldn't accept the whole document. I would receive pages of it.

MR. SCHREIER: If it turns out that he does designate certain pages and there are certain items which we, in good faith, cannot fathom or understand, could we direct a request through Your Honor to find out for what purpose he intends to introduce pages if we can't fathom or understand why?

JUDGE HANSCOM: I don't see why not.

I would ask counsel during the hearing, for that matter, at the time a document is offered what the relevance of the document is. I can't really see why this can't be stated ahadd of time.

Although, again, we have the problem of burdening counsel as well as yourselves, possibly, because the shoe will be on the other foot at some point. It is very difficult to prepare a case and at the same tim have massive submissions to make unless they are really necessary.

I am not totally clear just where we are now on these interrogatories that you have addressed.

Is it my understanding that if complaint counsel indicates the primarypurpose of each exhibit that he offers you find that is a compliance with your interrogatories?

MR. WALDMAN: Partially, Your Honor.

We are asking for an order directing discovery by those interrogatories so complaint counsel as he knows an exhibit is going to be introduced to substantiate one item of the complaint, furnishes that exhibit and the item of the complaint that he believes the exhibit proves.

If I may, we submit that this will prevent the bunch-up of time that will occur by receiving everything en masse in the middle of January. If we can get a serial production of the documents in the interim period from this day forward, it will enable us to prepare for trial more expeditiously and have a better and firmer understanding of the evidence to be introduced at the trial by complaint counsel.

For this reason, we ask that the interrogatories be signed as a discovery device.

MR. WINSTON: I believe we can take care of this. They seem to be talking, the way I interpret what they are saying on documents, that it is the timing of the thing. They would like to see a transmissionthat they can handle, much

like they gave us their subpoena return. I think we can accommodate them. We have had documents that we have accumulated a long time ago that we knew we would introduce. We can start with those documents at the beginning. In fact, it probably would help us in the preparatin of our case to have a task that we can work on continually and give them submissions until the final date, which is January 15.

We could have what we believe, at least at that point in time, to be a complete list of our exhibits.

JUDGE HANSCOM: If you are going to provide exhibits and witnesses as they are determined upon in the preparation of your case, then do so by letter to counsel, filing a copy with the Board, so there is no question as to what has been turned over and the date.

But that wasn't my major concern here.

What Mr. Waldman is asking is that you identify each exhibit as having the primary purpose of sustaining some allegation or other of the complaint, whatever it is that you plan to use it for.

MR. WINSTON: I think we are in agreement on the primary purpose.

JUDGE HANSCOM: You could do that?

MR. WINSTON: Right.

My objection would be to saying the SEC 10k relates to paragraph 11 and then have to go on an mention every casual

reference to any other part of the complaint. I think that is beyond the limits of normal discovery, that the primary purpose of the document --

JUDGE HANSCOM: What would be beyond the limits of primary discovery?

MR. WINSTON: To have reference to each and every allegation that Rio Rancho has approximately 91,000 acres. It may be casually referred to in each and every complaint paragraph. It may in some sense. At least one statement in certain documents would have reference all along the line.

If we come up with the primary purpose and maybe a secondary purpose if it is meaningful, then we could do that. The case is one big unity. The complaint paragraphs speak to certain parts of the unity. Many of the documents interrelate to all of the complaint paragraphs.

JUDGE HANSCOM: So you would provide the primary purpose and, where pertinent, the secondary purpose of each exhibit, but not foreclosing use of that exhibit for some other purpose not stated?

MR. WINSTON: That is right.

JUDGE HANSCOM: I think that is reasonable.

MR. SCHREIER: That is reasonable enough.

JUDGE HANSCOM: We can't expect counsel to nail down every last possible use of a document.

How will that be? Will we provide simply a list of

the documents that you are going to offer as exhibits, with a description, and the primary or secondary purpose of each document, stating the paragraph of the complaint or the allegation?

MR. WINSTON: Where the document is bulky or where we know that one page of 100 is the only page we are interested in, we will so designate.

JUDGE HANSCOM: Yes.

But what about interrogatories?

For example, Number 1. If complaint counsel supplies his documents, that will be accompanied with a list. I think you should mark the exhibit and identify it on the list. Then you will state what it is, a brief description, and you will state the primary purpose of that exhibit and, if pertinent, its secondary purpose.

Will that satisfy you, Mr. Waldman?

MR. WALDMAN: I believe it would. It would be keyed into either the complaint or theinterrogatories. That would satisfy us.

Am I correct in that?

JUDGE HANSCOM: It would almost have to be.

MR. SCHREIER: The interrogatories follow the complaint.

JUDGE HANSCOM: They follow the complaint.

If he says Exhibit 1, 1Jk, filed such-and-such

a date, or whatever brief description, primary purpose, paragraph 5 of the complaint, secondary purpose, commerce in paragraph 6, will that be satisfactory?

MR.SCHREIER: Yes, Your Honor; it would be.

JUDGE HANSCOM: You will do that?

MR. WINSTON: Maybe we would like the record to show how you would like us to number exhibits.

JUDGE HANSCOM: CX-1 and then sub-numbers, usually A through whatever letter is appropriate.

MR. WINSTON: A one-page document would be CX-1?

The first document you plan to get up and offer. You have to start somewhere.

MR. WINSTON: A two-page document?

JUDGE HANSCOM: CX-1A and B. That is what the reporter's contract requires, although many people use sub-Arabic numbers. We should be consistent.

MR. WINSTON: I have been crossed up on this before, so I wanted to get it straight and not have to re-number numerous documents.

JUDGE HANSCOM: Did someone object to the way you numbered them?

MR. WINSTON: We numbered them the way we thought was best.

JUDGE HANSCOM: How was that?

MR. WINSTON: Very much like you said, and then the

Judge issued an order giving another method, not knowing that we had pre-numbered them.

JUDGE HANSCOM: What was the difference?

Did you nuber them 1 and then with sub-Arab numbers?

MR. WINSTON: The problem is with the first page of a two-page document.

Is it CX-1-A or CX-1 with the second page numbered CX-1-A?

JUDGE HANSCOM: CX-1-A is the number of the first page of a multi-page document.

MR. WINSTON: Right.

JUDGE HANSCOM: CX-1-A.

The second page is CX-1-B; the third page, CX-1-C.

If it is just a one-page document, it is CX-2, for example.

MR. WINSTON: Thenwhen we get to CX-1-Z, the next number?

JUDGE HANSCOM: I don't there is any requirement at that point.

Of course, if the document has internal numbers, it will have its own numbering system. In that event, since the pages are numbered or the charts are numbered, whatever it is has numbers in it, you only need to number that with a basic exhibit number, CX-1.

If you have a group of documents, for example, that don't have numbers internally in them but you want them considered as one exhibit, then it would be CX-1-A, the first page; CX-1-B, the second page. If you go down past Z, then just be consistent. I would say start Z-1, Z-2, and so forth.

MR. SCHREIER: I prefer the double AA and triple AAA.

JUDGE HANSCOM: What would the next number be after Z?

MR. SCHREIER: CX-1-AA, because we are going to go through the alphabet many times, as Mr. Winston can tell you. A lot of these documents do not have numbers internally and are quite voluminous.

JUDGE HANSCOM: In such event, the first page of a group of documents will be CX-1-A; the second page, CX-1-B; and you will work your way down to CX-1-Z. Then it will be CX-1-AA, BB, CC, and so forth.

Let's adopt that system.

Is anything hanging fire?

MR. WINSTON: I think our brief discussion brought one thing to mind.

If we do go to trial on March 1, we would like the first part of the trial to be a documents day, at which time we could straighten out the paper work.

JUDGE HANSCOM: That can be covered.

I think I will ask you to file, when you file your list of witnesses, a request for trial dates and places; if you want the first two or three days of hearing to concern themselves with documents, just state that so everybody knows that to expect.

Have we taken care of your motion for discovery?

Are you satisfied with what we have been saying here?

What is outstanding, if anything?

MR. WALDMAN: Your Honor, for the time being, most assuredly we are perfectly satisfied.

JUDGE HANSCOM: Then, do you want me to do anything further about the motion for discovery?

It has not been ruled on by me because of Mr. Friend's statement last summer that it would be worked out, he felt, informally between counsel. Then I asked for a status report. Then you filed the papers objecting to certain things complaint counsel said, and you said in effect I will have to rule on it.

So, where are we on that now?

MR. WALDMAN: I would prefer to have anorder granting the interrogatories, which would then give us a mechanism to put into effect everything that we have agreed to in this hearing.

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JUDGE HANSCOM: I can't grant the interrogatories because they are broader than what we have been talking about here this afternoon.

I would state that complaint counsel will provide a witness list and a list of exhibits and that the exhibits will state a description of each exhibit and the primary and secondarypurpose, if applicable, of that exhibit to a paragraph of the complaint or to an interrogatory.

Is that satisfactory?

MR. WALDMAN: Yes, sir.

And when will that production occur, Your Honor?

JUDGE HANSCOM: As complaint counsel determines, but no later than January 15.

MR. WINSTON: We will do our best to give periodic transmissions of normal size boxes so you can assimilate it and so our Xerox machine isn't tied up two weeks in a row.

JUDGE HANSCOM: In effect, you can identify the primary purpose and the secondary purpose as to paragraph of the complaint and then identify the interrogatory number. It is simple. Each interrogatory refers to a paragraph of the complaint, I think.

MR. WINSTON: I believe there are more interrogatories than there are complaint paragraphs. Most of our records and our thinking are in terms of paragraphs and not the designations into which they broke the paragraphs down.

Is that correct?

MR. WALDMAN: There is a discrepancy because sometimes the complaint was well-drafted and we know what you were talking about. We have only 47 interrogatories and there were, I think, 94 paragraphs in the complaint.

What I would prefer is the exhibits be keyed in to the complaint paragraphs.

MR. WINSTON: That is what I would do.

JUDGE HANSCOM: You would prefer the exhibits to be keyed in to the complaint paragraphs?

MR. WALDMAN: Yes.

JUDGE HANSCOM: That would take care of your interrogatories.

Instead of that, he will key his exhibits in to the complaint paragraphs.

MR. SCHREIER: I have one open item on this, Your Honor. That is, if there is favorable material in their files that is not covered by what we have said heretofore, I would like some sort of opportunity to review it -- material in their files in favor of AMREP, which they are not going to use and not covered by what we have said heretofore.

JUDGE HANSCOM: I don't think it will be covered because complaint counsel is going to provide a list of his witnesses and a list of the exhibits he intends to offer in evidence, and I presume he is offering those materials to

sustain the allegations of the complaint.

MR. SCHREIER: I presume that, too.

I would like to get favorable material, though, if they have it. I think that is fair.

MR. WINSTON: I would like to speak to that, Your Honor.

Many of the people who write to the Federal Trade Commission write them only because they are unhappy. It is seldom we get glowing reports about companies.

Assuming we do have some glowing reports that AMREP would like to have, it doesn't come within real discovery of our case. It does not go into the case in chief. We see no real need. They can't be surprised by it. There is no real reason why it should ever be turned over, if it exists.

MR. SCHREIER: We are prejudiced by not having it.

JUDGE HANSCOM: Aside from the precedent governing discovery, do you have any objection?

Is there any fundamental objection to turning over to respondent AMREP documents that may be in the Commission's files which would be favorable to AMREP? Is there any objection to that?

MR. WINSTON: It cuts across the grain.

A person has the right to communicate with the FTC without that document being turned over indiscriminately

to other persons. I see no compelling reason why it should be. It doesn't relate to our case.

They have made no showing that they can't raise a defense without those materials. It sounds to me like something that would be very pleasant if they could get their hands on it. They might get some evidence out of it.

JUDGE HANSCOM: If I have to rule, I will have to be guided by the precedents of the Commission unless for some reason I think that justice in a particular case requires a different result.

What I am asking you is, if you have a communication or communications from people that say, in effect, "I am very happy with the lot I bought. Why are you sing AMREP?", is there any reason why you couldn't turn that material over to respondent? It is not going to hurt your case. It does provide them a lead to somebody who conceivably would be a defense witness.

MR. WINSTON: It would take us a certain amount of time to do this. We would have to go through those communications received. We have had a lot of correspondence on this case and we are still getting correspondence. It would take time. I really don't see the compelling reason.

JUDGE HANSCOM: There is no compelling reason as far as you are concerned but there may be as far as AMREP is concerned.

MR. WINSTON: But unexpressed.

MR. SCHREIER: I am expressing it.

JUDGE HANSCOM: They want favorable information.

MR. WINSTON: I would object to giving that information, but, of course, we will follow the order of the pre-trial.

JUDGE HANSCOM: I think I will ask you to do that.

MR. WINSTON: Could we delete the name and address of the person in the correspondence?

MR.SCHREIER: I don't think that would be very helpful to us, Your Honor, because we want to interview the person and use him as a defense witness.

MR.WINSTON: That would take care of the confidentiality problem. They could come back to us again if they felt they really needed this person as a witness for the defense, if they could make a showingat that time.

MR. SCHREIER: That is correct, not a showing.

If he gives us initially the favorable material without names and addresses and of the material -- let's say there are 10 letters and we want touse only two of those people, we would not be interested in the names of the other eight.

JUDGE HANSCOM: So, initially you are agreeable to the pocedure by which complaint counsel would blot out the name?

MR. SCHREIER: Yes.

JUDGE HANSCOM: And then if you do want to interview that individual, you would then go back to complaint counsel with a request on the record that the name be supplied?

MR. SCHREIER: Yes, Your Honor.

MR. WINSTON: That is satisfactory.

Of course, I might add, any reference in the body of the letter that might identify the person, such as their lot and unit number.

JUDGE HANSCOM: That goes without saying.

MR. SCHREIER: Yes.

JUDGE HANSCOM: I expect good faith on the part of everybody in that case.

You will blot out only what is truly needed to protect the identity of the individual initially.

How do we say this?

Complaint counsel will provide copies of all favorable -- what -- communications?

MR. SCHREIER: Material in their files, Your Honor.

JUDGE HANSCOM: Favorable material.

Does that mean something broader than a letter from a member of the public?

MR. SCHREIER: It could be an interview statement,

whatever they would have; an affidavit. It would be the same thing as they would have with a witness, Your Honor.

JUDGE HANSCOM: Favorable statement, affidavits, or communications.

MR. SCHREIER: Yes, Your Honor.

I take it that reports would be covered under communications.

JUDGE HANSCOM: Reports.

MR. SCHREIER: That would be, for example, an expert's report which might be favorable to us.

JUDGE HANSCOM: Have you any comment on that?

MR. WINSTON: We have already covered this area.

MR. SCHREIER: That was with respect to the experts you were sending down with our permission.

Now we are talking about possible other experts.

MR. WINSTON: I just hate to enlarge this area.

I see no compelling reason in the first place. I think it should be limited to the types of correspondence that the FTC regularly receives. We should not be required to go diving into our files, pulling out reports during a three-year investigation.

We should limit it to something reasonable that I can put somebody on and that can find it.

JUDGE HANSCOM: Affidavits, communications from third parties, statements, affidavits.

MR. WINSTON: I would like to limit it to third party consumers, purchasers, if they are looking for witnesses.

MR. SCHREIER: For example, if his claim is that there is no water or water is not potable and he has an expert who shows that two years ago a survey was made or a testing made and found that the water was perfectly potable and suitable and he is not going to use that, I would like to know about that.

I think that is only fair, Your Honor.

That is the type of thing I am interested in. We can't duplicate it.

There is no way I can tell what happened two or three years ago. My expert, if I get one, -- and I have a short period of time to do so -- will speak as of some time in 1976.

JUDGE HANSCOM: Do you know whether there are reports such as Mr. Schreier is referring to in the files? Do you know one way or the other or are you justnot sure?

MR. WINSTON: I am not sure what is in all the documents.

I am sure as to how many experts we have on the payroll or how many people we have contracts with. I know that for sure.

To be required to go through and filter through

documents which we have discarded at some point as not really proving or disproving anything for our case, I think -- 1 2

JUDGE HANSCOM: Favorable. 3

MR. WINSTON: We have to look at it to determine whether it is favorable or unfavorable. 4 5

Just because we have eliminated it as a document doesn't mean that it was very good from AMREP's point of view. It may have been too old. It may have been by a person not necessarily qualified to give an opinion on such a subject. 6 7 8 9 10

There are many reasons we discard things as not being relevent to our case or the subject at hand. 11 12

I just want to limit this request to something where we don't tie up our time trying to read through everything that has been set to one side. 13 14 15

MR. SCHREIER: We will volunteer to read through it for him. 16 17

JUDGE HANSCOM: Would these be experts that the Commission has hired or paid? 18 19

MR. WINSTON: It would not be experts that we have hired. It would be documents that we had run across. 20 21

If we are talking about Rio Rancho, it might be something we had picked up during the course of investigation where somebody somewhere had an opinion about whether there was water at Rio Rancho, for example. 22 23 24 25

JUDGE HANSCOM: Let's back up.

You were agreeable to provide copies of all favorable -- this is the way I would put it in an order -- all favorable statements, affidavits, or communications from third party consumers, with the name of the individual or any other identifying material obliterated.

MR. WINSTON: After you ordered that I should, with that designation, that is the way I wanted it to read.

JUDGE HANSCOM: You will do that?

MR. WINSTON: Yes.

JUDGE HANSCOM: You accept that?

MR. WINSTON: Yes.

JUDGE HANSCOM: You want, in addition, Mr. Schreier, reports.

Is that the technical word -- reports?

MR. SCHREIER: Yes; reports.

JUDGE HANSCOM: Reports from whom?

In other words, what will you add to this to achieve your purpose?

MR. SCHREIER: Technical reports and analyses.

JUDGE HANSCOM: From whom?

MR. SCHREIER: From third parties.

MR. WINSTON: Your Honor, if I might speak to third parties, there are only a limited number of people who know what a project like Rio Rancho is all about. You can talk

to the company. You can get company documents. That is the main part of what we will be giving as an exhibit list. You can talk to "X" employees. You can talk to customers of the company. Then you can talk to the agencies that have some regulatory powers over real estate companies.

Then you can go into the State and talk to people that have some regulatory activities over land companies.

Aside from that, there are just not any technical reports floating around.

I think AMREP in preparing its defense, which is what this is, can show no compelling reason for us to go back through our files and try to come up with documents that may have been favorable to them when they can go to the same agencies that we want to and get the same documents, if, in fact, there are more than a handful of such documents.

MR. SCHREIER: Your Honor, you honored their subpoena which was really extensive, and that was the third subpoena. They had two years investigating before that. Now they are complaining about giving us some of the documents.

I don't have two years. I am not even going to have a couple of months. He is giving me his list on January 15th and I am going to trial on March 1st.

JUDGE HANSCOM: Who is going to trial?

It is his case in chief.

MR. SCHREIER: That is right.

You are not going to give me a three-year adjournment. I am sure of that.

JUDGE HANSCOM: I have no such intention.

MR. SCHREIER: I don't intend to ask it, but I would like the reports that are favorable that he acquired over this three-year period. He says I could duplicate it. I can't.

JUDGE HANSCOM: The difficulty I have here is that we are in a gray area where I would concede there is some merit to Mr. Winston's objections.

I am trying to accommodate your situation, too.

It is customary for respondents or defendants to seek favorable material, of course.

I am groping. I don't know what is involved. I don't want to be unjust to the Government.

I think what I will do is issue an order that will require you to turn over favorable statements affidavits or communications from third party consumers, with the name or identification obliterated, and favorable technical reports or analyses from third parties, and provide that if you find when you go through the materials looking for these materials or otherwise there appears to be a unique problem making it unjust or unfair to do this, or for some other reason, I will let you return to me a statement of that fact and I will consider the whole situation at that point.

There may not be a problem.

Maybe you will find, as you just said, -- I don't know whether this is true or not -- there are only a handful of these, and if there is no violation of confidence, the fact that the Government is giving in effect a name to respondent that might be helpful should not concern you. If you have a case, you have a case. They are obviously going to come up with a defense, too. If you give them a measure of help, the Government should not be miserly about that.

MR. WINSTON: Maybe I misspoke myself when I said it might be a small number of documents, because the word "favorable" is very subjective.

To give an example, there is a bank, I believe the Bank of New Mexico, that publishes a document called The New Mexico Economy. It comes out once a year. In that document they will have a section probably about Bernalillo County, maybe Sandoval County, or maybe Albuquerque. If the economy is doing well, then maybe that is favorable to AMREP because its Rio Rancho project is near by.

I wouldn't know how to interpret the word "favorable".

MR. SCHREIER: That is absolutely the point, Your Honor.

He says, and the gravamen of the recent indictment was that what we are selling is worthless. Basically, that is

what they say. We don't concede that for a minute. We think we ar selling something very valuable. He has taken an absurd example which shows that what we are selling is valuable and he doesn't want to give it to us.

JUDGE HANSCOM: I shall ask you, Mr. Winston, to do this:

If unique problems are present when you start, making it unfair or unjust or impossibly burdensome, then you file a concise paper stating what the problem is. Mr. Schreier will answer it right away, and I will try to make a reasonable judgment on it. You can try it and if it doesn't violate any confidences and there is no particular reason why the Commission shouldn't do this other than the general thought that they are not entitled to it under precedent, then I can't see why it should not be done.

I don't look upon this as a precedent-setting decision.

We are trying to get the case organized expeditiously.

If driven to it, I would probably rule to the contrary. But I am not saying that I would absolutely. This is a civil proceeding and not a criminal proceeding.

Unless there is a specific reason to think that the Government is withholding something that would exonerate, if that is the word, I wouldn't be inclined to grant broad

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discovery of a so-called fishing expedition type. But I don't have to decide that. I am going to decide it this way.

MR. SCHREIER: What is the return date for this material?

JUDGE HANSCOM: That is a good point.

When do you think you can turn this material over to counsel?

MR. WINSTON: January 15th?

MR. SCHREIER: I don't object to January 15th.

JUDGE HANSCOM: All right.

In view of the fact that it would go to your case --

MR. SCHREIER: That would give me plenty of time, between January 15th and March 1st. I would have enough time.

JUDGE HANSCOM: Is your motion for discovery handled satisfactorily?

MR. SCHREIER: Yes, Your Honor; it is.

JUDGE HANSCOM: Other than what I may choose to say about it.

Actually, I wouldn't have to say anything at this juncture. It is all said here and now; is that right?

MR. SCHREIER: Yes, Your Honor.

JUDGE HANSCOM: I may make some reference to it in the order on the pre-trial conference. That would then take

us to the case in chief.

I must say I have forgotten what Mr. Winston said last June -- maybe it was earlier -- as to the length of the hearings in this case. I was thinking in terms of several weeks. I had forgotten that you were thinking in terms of several months. I will leave that to your request for hearing date. I don't think it is practical to have hearings in one sitting for three months, do you?

Was that your idea, week after week?

MR. SCHREIER: The longest hearing, I believe, would be in New York City for five weeks.

I would agree with you that there should be breaks.

JUDGE HANSCOM: I have other cases and things pile up and I have to rule on motions. This isn't the only case I have. I couldn't possibly handle the other case load that I have if I were to start hearings and stay for three months holding nothing but hearings.

MR. SCHREIER: We have four natural breaks. We have one in the State of New York; one in the State of Florida; one in the State of Missouri; two in the State of New Mexico. Those are natural breaks.

We would like to get all the work done in one particular state before we move on.

JUDGE HANSCOM: Can you begin your case a little sooner than the first of March?

I originally was thinking of the 10th of February or the 17th of February.

Do you suppose you could start then?

That is about a week earlier.

That would permit me to schedule approximately four weeks. Otherwise, I would have to have a break in the two weeks because I have scheduled a case for hearing commencing March 20th.

MR. SCHREIER: How long a break would we have after the first hearing?

The first hearing would be in New Mexico.

JUDGE HANSCOM: You say four weeks?

MR. SCHREIER: Yes. A week in Santa Fe; a total of five.

JUDGE HANSCOM: I have scheduled hearings in another case commencing March 23rd. If the case is not settled, of course, I would have to cancel those or have an intermission in these.

MR. SCHREIER: I believe we could.

JUDGE HANSCOM: So I will schedule the case in chief to commence on February 17th.

MR. WINSTON: Yes.

MR. SCHREIER: And hearings will last from February 17th to what date, Your Honor?

JUDGE HANSCOM: I am trying to decide that.

Four weeks.

MR. WINSTON: It is hard to tell at this stage. We thought it would be a full four weeks in Albuquerque and then 70 miles to the north, Santa Fe, for a week. It is possible we will save some time in there.

JUDGE HANSCOM: If your case is truly going to last three months I see no way to do this. I don't want to put it ahead to April or May. I would much rather fit it in where I may be able to do it and then have intermissions for me to have other hearings or do other things.

MR. WINSTON: I believe we can do it.

JUDGE HANSCOM: We have to start somewhere, so we will start on that basis.

MR. SCHREIER: Four weeks.

JUDGE HANSCOM: Yes.

On January 15th, I would like you to file as abbreviated a trial schedule as you can. I am not cutting you down, but please re-examine your case to see if you really need three solid months of hearings in all these different places.

On January 15th, you will be a little closer to the event. I would like you to propose a schedule. I am not saying I can agree with it, and Mr. Schreier, I am sure, has other things to do besides AMPPEP.

You may have other cases, although this may be the

major thing in your law firm right now. I could believe that.

So, file a schedule. We will simply have to do the best we can.

I also have initial decisions to write, one in particular that will be time-consuming. I don't know when I can get that done. I have discovered you can't put off a case because you have something else to do. You have to bring them all along at the same time and then try to do the best you can. Sometimes they drop out.

My thought would be that any trial preparation, discovery, anything of that sort that you need to undertake, Mr. Schreier, for your case you will be doing as matters go along.

MR. SCHREIER: As soon as I possibly can, Your Honor.

JUDGE HANSCOM: We would start the case in defense, I was thinking, six weeks after complaint counsel rests.

Have you thought of that, Mr. Winston?

MR. WINSTON: I think six weeks would be fine.

MR. SCHREIER: I would like to speak to my co-counsel, not Mr. Parkoff, but Mr. Friend, bfore I speak on that. Six weeks does sound enough. Mr. Friend was talking to me about a four-month hiatus. I would like to speak to him, if I may.

JUDGE HANSCOM: The reason I say six weeks -- in fact, I don't think I would accept four months --is the fact that you have all this time while complaint counsel is doing these various things. You have all this time to undertake preparations. Then you will have all their documents on January 15th or the middle of January, and their witnesses on February 1st. Then you will have this period of time that complaint counsel will be putting in their case. You will have plenty of opportunity to know what it is you are going to meet. I am sure you have resources.

I would think that when complaint counsel announce they rest, in fact six weeks is generous, I would think for you to commence the case in defense.

MR. SCHREIER: I don't really think it is that generous, Your Honor, when you consider that I will start tomorrow, October 31st, with three months now and --

JUDGE HANSCOM: The complaint went out last spring.

MR. SCHREIER: It went out in March but I really haven't had a case, Your Honor. I don't have the case today.

JUDGE HANSCOM: I am going to set the case in defense six weeks after complaint counsel rests, unless some overwhelming reason is presented to me why that is unfair or unjust or unreasonable, whatever.

MR. SCHREIER: Very well, Your Honor.

JUDGE HANSCOM: I am very firm on the six weeks,

although I am, of course, willing to provide the same type of recesses, if that is the word, reasonable intervals, where we have to move, if we do, from one locale to another.

I wish both of you would devote some thought to whatever measures can be taken to minimize this. We are talking about a monstrous case, it seems to me. "Monstrous" is not the word. A very, very extended set of hearings.

MR. SCHREIER: I will endeavor to be as brief as I can, Your Honor.

JUDGE HANSCOM: I didn't mean that.

Is there any means that could be taken to make the proceeding more effluent?

If we were, for example, taking testimony in Albuquerque, is it possible for defendants to put on witnesses at that time?

MR. SCHREIER: It may be. I am not certain, but it may be.

JUDGE HANSCOM: This is just a thought that came to mind. I am not sure that is a good idea. I don't want to confuse you. It is better to go with one side of the case and then hear the other side if that produces clarity rather than confusion. There may be a problem that you might not know the full extent of complaint counsel's case so you might not be able to call defense witnesses in the beginning of theirs, for example. It may not be a good idea. I was just

expressing the thought, is there any novel or different procedure that would make the thing more efficient? I don't know. We will probably proceed in the traditional way.

We will have Mr. Winston put in his case. We will have a six weeks' interval unless something very unusual is presented causing me to think that additional time should be granted. We will put in the defense case.

I guess I have run through all the various ideas I have had about this case.

MR. WINSTON: I have nothing further, Your Honor.

JUDGE HANSCOM: We will recess.

I will issue an order as soon as I can. I have to go to the West Coast. I have only tomorrow. Next week I will be on the West Coast. If I can get this written tomorrow, I will file it tomorrow. If not, it will be filed a week from Monday.

We will recess and await developments.

(Whereupon, at 5:10 p.m., the pre-trial conference adjourned.)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
AMREP CORPORATION, a corporation.	)	DOCKET NO. 9018

ORDER ON RESULTS OF PREHEARING CONFERENCE AND SETTING FEBRUARY 17, 1976, FOR COMMENCEMENT OF THE CASE-IN-CHIEF

A prehearing conference was held on October 30, 1975, and the status of this proceeding was reviewed. Such review included ascertainment of the additional preparations needed by complaint counsel and the Motion for Discovery previously filed by respondent, ruling on which was deferred last Summer on the advice that such Motion could be resolved informally between counsel. The following schedule for further proceedings was established.

November 13, 1975

(1) By this date complaint counsel will advise respondent AMREP of documents or materials which complaint counsel consider were required by the subpoena duces tecum issued by the law judge to respondent, but which were not produced. A copy of this communication to respondent will be filed with the Secretary for inclusion in the record of this proceeding.

(2) On or before this date complaint counsel will file, pursuant to §3.31 of the Commission's rules, their initial request for admissions of fact. Complaint counsel advise that an additional request for admissions would follow the first depending upon answers received. Such second request will be filed as soon as practicable after the first request is disposed of.

(3) Complaint counsel state that certain additional material is needed from AMREP and an application would be made for an additional subpoena duces tecum. Such application will be made on or before the above date.

November 28, 1975

By this date respondent AMREP will supply complaint counsel with the documents or materials which complaint counsel contend were required by the subpoena duces tecum issued to respondent but which were not produced in response thereto. It is noted that the position of counsel for respondent is that full compliance with the subpoena has been made. The additional documents or materials sought by complaint counsel, nevertheless, will be supplied unless some major issue is involved in which event the law judge will be advised by suitable filing without delay.

December 4, 1975

Complaint counsel advise that an application will be made to depose certain individuals in the management of respondent AMREP. The law judge urged counsel to attempt to accomplish this by voluntary interviews. If this is not practicable complaint counsel will make application for depositions and the showing required by §3.33 of the rules will have to be made to warrant the granting thereof. Such application will be made by December 4, 1975, although the law judge believes that it would be advisable to make such application earlier than this date if practicable.

January 16, 1976

On or before this date complaint counsel will provide respondent AMREP with a list of the exhibits complaint counsel plan to offer in evidence. Such list will contain the exhibit number assigned to each document, a brief description of the document, and will state the primary purpose of offering such document and the secondary purpose, if any. In other words, complaint counsel will identify on the list of exhibits the specific paragraph of the complaint which each exhibit is primarily being offered to support, and the secondary paragraph supported by such exhibit, if any.

Complaint counsel will supply respondent AMREP with copies of all documents to be offered in evidence unless respondent already has the original or a copy, in which event the foregoing list of exhibits will suffice. Where documents consist of many pages, complaint counsel will identify the particular pages or portions of such documents for which the multi-page document is being offered, stating the primary and secondary purposes as set out above. In ruling on the admissibility of such documents, the undersigned will be guided by §3.43(b) of the Commission's rules.

January 30, 1976

On or before this date complaint counsel will file a list of the witnesses complaint counsel intend to call together with a brief summary of the testimony expected from each. With respect to the summary of expert witnesses who have inspected any of respondent's land developments, if any, see the comments later herein.

February 17, 1976

Presentation of complaint counsel's case will commence at 9:30 A.M. on this date at a place and hearing room or court room to be hereafter designated.

Respondent's Motion for Discovery

At the prehearing conference considerable discussion was devoted to respondent's Motion for Discovery. As set out above, the undersigned is requiring complaint counsel to state the primary purpose and the secondary purpose, if any, for each document offered in evidence. This is to be done by identifying the paragraph of the complaint which each document is being offered primarily to support, and where such document has a secondary purpose, the paragraph of the complaint which each document is secondarily being offered to support.

In addition, complaint counsel will provide as soon as is practicable, and in no event later than January 15, 1976, copies of all statements, affidavits, or communications in the Commission's files from third party consumers or purchasers of land from respondent which are favorable to respondent. Initially, the name of such consumer or purchaser may be deleted, as well as anything in the statement, affidavit, or communication which would identify the writer, if in complaint counsel's judgment the furnishing of such letter without the name or identifying material deleted would violate a confidence, or be unfair or unjust. Thereafter if respondent decides that such person should be contacted in defense, the undersigned will determine whether disclosure of the person's identity is proper and appropriate under the circumstances.

Complaint counsel will also examine the materials in the file of this proceeding to identify any technical reports or analyses from third parties which are favorable to respondent AMREP. Such favorable technical reports or analyses will be made available to respondent AMREP unless some unique or unusual problem appears to exist which would make such disclosure unfair or unjust, in which event the circumstances will be brought to the attention of the undersigned and a decision of the proper action to be taken will be made.

Counsel for respondent AMREP agreed that the foregoing satisfactorily disposes of their Motion for Discovery.

Complaint Counsel Request that Experts be Permitted to Inspect Respondent's Land Developments

At the prehearing conference complaint counsel stated that they desire to arrange for experts to visit one or more of respondent AMREP's developments.

Counsel for AMREP consented to such visits provided (1) that complaint counsel advise counsel for AMREP ahead of time of the names of the expert or experts who would visit respondent's land and the date or dates of such visits, and (2) complaint counsel would make available to respondent AMREP any report rendered by complaint counsel's expert or experts after such visits.

The foregoing provisions are reasonable and will be followed by complaint counsel. The report or reports submitted by complaint counsel's experts will be disclosed to respondent AMREP as soon as practicable after complaint counsel receive such reports but in no event later than January 16, 1976, when complaint counsel provide respondent with a list of exhibits and copies of the documents to be offered in evidence.

If no written report is submitted to complaint counsel by the expert or experts visiting respondent's land, and complaint counsel list such expert or experts as witnesses in this proceeding, the summary of the expected testimony provided AMREP will be in full detail setting out all of the matters to which the expert or experts will testify. If each such summary does not fairly put respondent AMREP on notice of the testimony ultimately given by the expert, the undersigned will exclude it, or if such action would be manifestly unjust or unfair, or prevent the true facts from emerging in this proceeding, other action as is proper will be taken such as deferring cross-examination on the points not included in the summary.

Serial Production

To the extent practicable complaint counsel are urged to provide the names of the witnesses and the summaries of testimony, as well as the documents complaint counsel plan to offer in evidence, to respondent AMREP as soon as complaint counsel decide that they will call such witnesses or will offer such documents. Such procedure will contribute to the orderly and expeditious progress of this proceeding.

Complaint Counsel's Hearing Schedule

On or before January 15, 1976, complaint counsel will file a proposed schedule of places and dates for presentation of the case-in-chief. In view of the extended hearings which it appears at this juncture that complaint counsel will seek, intervals of the sort normally involved in judicial proceedings will have to be scheduled. Complaint counsel are urged to review their proof to be certain that only those witnesses are called who are truly necessary to their case.

Defense Hearings

Defense hearings will commence six weeks after the conclusion of the case-in-chief.

Daniel H. Hanscom

Daniel H. Hanscom
Administrative Law Judge

October 31, 1975

Index No. Year 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMREP CORPORATION,

Plaintiff,

- against -

FEDERAL TRADE COMMISSION,

Defendant.

NOTICE OF MOTION

SOLOMON H. FRIEND
THEODORE R. SCHEIER
H. DAVID FRAGOP
Attorneys for Plaintiff
AMREP CORPORATION
Office and Post Office Address, Telephone
16 West 61 Street
New York, New York 10023
(212) 541-7300

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

75 Civ. 4013

ENDORSEMENT ORDER

An indictment having been returned on October 28, 1975 by the grand jury in connection with the criminal investigation with which this motion is concerned, the motion within is hereby denied as moot.

SO ORDERED.

Dated: New York, New York
November 3, 1975

U.S.D.J.

U.S. DISTRICT COURT
FILED
NOV 7 1975
S.D. OF N.Y.

MICROFILM
NOV 10 1975

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Please take notice that a ___ of which the within is a copy, was this day entered in the within entitled action, in the office of the Clerk of this Court.

Dated, N. Y., _____, 19___

Yours, etc.,

_____
United States Attorney
Attorney for _____

Please take notice that the within ___ will be presented for settlement and signature to the Honorable _____ United States District Judge, at the office of the Clerk, Room 601, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the ___ day of _____, 19___, at 10:30 o'clock in the ___noon or as soon thereafter as counsel can be heard.

Dated, N. Y., _____, 19___

Yours, etc.,

_____
United States Attorney
Attorney for _____

_____
Attorney for

United States District Court

SOUTHERN DISTRICT OF NEW YORK

AMREP CORPORATION,

Plaintiff,

- v -

FEDERAL TRADE COMMISSION,

Defendant.

NOTICE OF MOTION

75 Civ. 4013 (LWP)

PAUL J. CURRAN
United States Attorney
Attorney for Defendant
TELEPHONE
791-0051

Due service of a copy of the within is hereby admitted.

New York, _____, 19___

_____
Attorney for

To

_____
Attorney for

FTI-68-6-12-76-50M-4214

U.S. DISTRICT COURT
FILED
NOV 7 1975
S.D. OF N.Y.

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75 Civ. 4013

ENDORSEMENT ORDER

An indictment having been returned by the grand jury on October 28, 1975 in connection with the criminal investogation with which this action is concerned, the motion of the defendant FTC to dismiss the complaint is hereby granted on the ground that the action is moot.

SO ORDERED.

Dated: New York, New York
November 3, 1975

U.S.D.J.

FILED
NOV 3 1975

205a Courtesy Copy Received 10/17/75

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP Corporation, a a corporation.	Docket No. 9018

COMPLAINT COUNSEL'S FIRST REQUEST FOR ADMISSIONS

Pursuant to Rule 3.31 of the Commission's Rules of Practice, counsel supporting the complaint herewith serve upon respondent a written request for the admission of the truth of the relevant matters of fact set forth below.

Request Number One: For each calendar year since 1961, AMREP Corporation has owned more than 75% of the outstanding voting securities of Rio Rancho Estates, Inc.

Request Number Two: A majority of the directors of Rio Rancho Estates, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Three: A majority of the officers of Rio Rancho Estates, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Four: The President of Rio Rancho Estates, Inc. has also been, in the same year, an officer or director of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Five: Since 1961, Rio Rancho Estates, Inc. has been engaged in the business of developing a tract of land in Sandoval County, New Mexico. It sells lots and acreage of said tract to members of the general public. The size of the tract is in excess of 90,000 acres, a portion of which has been sold to members of the general public.

Request Number Six: Advertisements, promotional literature and reports used by Rio Rancho Estates, Inc. to advertise and promote the sale of land, houses and condominiums at Rio Rancho Estates are prepared by AMREP Corporation or are submitted to AMREP Corporation for review and approval.

Request Number Seven: Officers or employees of Rio Rancho Estates, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Rio Rancho Estates, Inc.

Request Number Eight: AMREP Corporation consolidates operating results of Rio Rancho Estates, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Nine: AMREP Corporation at times represents to members of the general public that Rio Rancho Estates, Inc. is a division and not a subsidiary of AMREP Corporation.

Request Number Ten: AMREP Corporation at times represents that it is the developer of Rio Rancho Estates.

Request Number Eleven: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Rio Rancho Estates, Inc.

Request Number Twelve: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Rio Rancho Estates, Inc.

[The next Request for Admission appears at page 3.]

Request Number Thirteen: For each calendar year since 1962, AMAEP Corporation has owned more than 75% of the outstanding voting securities of Silver Springs Shores, Inc.

Request Number Fourteen: A majority of the directors of Silver Springs Shores, Inc. have also been, in the same year, officers or directors of AMAEP Corporation for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Fifteen: A majority of the officers of Silver Springs Shores, Inc. have also been, in the same year, officers or directors of AMAEP Corporation for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Sixteen: The President of Silver Springs Shores, Inc. has also been, in the same year, an officer or director of AMAEP Corporation for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Seventeen: Since 1962, Silver Springs Shores, Inc. has been engaged in the business of developing a tract of land in Marion County, Florida. It sell lots and acreage of said tract to members of the general public. The size of the tract is in excess of 40,000 acres, a portion of which has been sold to members of the general public.

Request Number Eighteen: Advertisements, promotional literature and reports used by Silver Springs Shores, Inc. to advertise and promote the sale of land, houses and condominiums at Silver Springs Shores are prepared by AMAEP Corporation or are submitted to officers, directors or employees of AMAEP Corporation for review and approval.

Request Number Nineteen: Officers or employees of Silver Springs Shores, Inc. regularly report to directors, officers or employees of AMAEP Corporation with respect to the operation of Silver Springs Shores, Inc.

Request Number Twenty: AMAEP Corporation consolidates operating results of Silver Springs Shores, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Twenty-One: AMAEP Corporation at times represents to members of the general public that Silver Springs Shores, Inc. is a division and not a subsidiary of AMAEP Corporation.

Request Number Twenty-Two: AMREP Corporation at times represents that it is the developer of Silver Springs Shores, Inc.

Request Number Twenty-Three: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Silver Springs Shores, Inc.

Request Number Twenty-Four: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Silver Springs Shores, Inc.

[The Next Request for Admission appears at page 5.]

Request Number Twenty-Five: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Eldorado at Santa Fe, Inc.

Request Number Twenty-Six: A majority of the directors of Eldorado at Santa Fe, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Twenty-Seven: A majority of the officers of Eldorado at Santa Fe, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Twenty-Eight: The President of Eldorado at Santa Fe, Inc. has also been, in the same year, an officer or director of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Twenty-Nine: Since 1970, Eldorado at Santa Fe, Inc. has been engaged in the business of developing a tract of land in Santa Fe County, New Mexico. It sell lots and acreage of said tract to members of the general public. The size of the tract is in excess of 36,000 acres, a portion of which has been sold to members of the general public.

Request Number Thirty: Advertisements, promotional literature and reports used by Eldorado at Santa Fe, Inc. to advertise and promote the sale of land, houses and condominiums at Eldorado at Santa Fe are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Thirty-One: Officers or employees of Eldorado at Santa Fe, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Eldorado at Santa Fe, Inc.

Request Number Thirty-Two: AMREP Corporation consolidates operating results of Eldorado at Santa Fe, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Thirty-Three: AMREP Corporation at times represents to members of the general public that Eldorado at Santa Fe, Inc. is a division and not a subsidiary of AMREP Corporation.

Request Number Thirty-Four: AMREP Corporation at times represents that it is the developer of Eldorado at Santa Fe.

Request Number Thirty-Five: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Eldorado at Santa Fe, Inc.

Request Number Thirty-Six: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Eldorado at Santa Fe, Inc.

[The Next Request for Admission appears at page 7.]

Request Number Thirty-Seven: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Oakmont Shores, Inc.

Request Number Thirty-Eight: A majority of the directors of Oakmont Shores, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Thirty-nine: A majority of the officers of Oakmont Shores, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Forty: The President of Oakmont Shores, Inc. has also been, in the same year, an officer or director of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Forty-One: Since 1971, and until 1974, Oakmont Shores, Inc. has been engaged in the business of developing a tract of land in Missouri. It sells lots and acreage of said tract to members of the general public. The size of the tract is in excess of 3,500 acres, a portion of which has been sold to members of the general public.

Request Number Forty-Two: Advertisements, promotional literature and reports used by Oakmont Shores, Inc. to advertise and promote the sale of land at Oakmont Shores are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Forty-Three: Officers or employees of Oakmont Shores, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Oakmont Shores, Inc.

Request Number Forty-Four: AMREP Corporation consolidates operating results of Oakmont Shores, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Forty-Five: AMREP Corporation at times represents to members of the general public that Oakmont Shores, Inc. is a division and not a subsidiary of AMREP Corporation.

Request Number Forty-Six: AMREP Corporation at times has represented that it is or will be the developer of Oakmont Shores.

Request Number Forty-Seven: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Oakmont Shores, Inc.

Request Number Forty-Eight: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Oakmont Shores, Inc.

[The Next Request for Admission appears at page 9.]

Request Number Forty-Nine: For each calendar year since 1969, AMREP Corporation has owned more than 75% of the outstanding voting securities of Mid-Florida Lakes, Inc.

Request Number Fifty: A majority of the directors of Mid-Florida Lakes, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Fifty-One: A majority of the officers of Mid-Florida Lakes, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Fifty-two: The President of Mid-Florida Lakes, Inc. has also been, in the same year, an officer or director of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Fifty-Three: Since 1969, and at least until 1974, Mid-Florida Lakes, Inc. has been engaged in the business of developing a tract of land in Florida. It sells lots and acreage of said tract to members of the general public. The size of the tract is in excess of 250 acres, a portion of which has been sold to members of the general public.

Request Number Fifty-Four: Advertisements, promotional literature and reports used by Mid-Florida Lakes, Inc. to advertise and promote the sale of land at Mid-Florida Lakes are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Fifty-Five: Officers or employees of Mid-Florida Lakes, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Mid-Florida Lakes, Inc.

Request Number Fifty-Six: AMREP Corporation consolidates operating results of Mid-Florida Lakes, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Fifty-Seven: AMREP Corporation at times represents to members of the general public that Mid-Florida Lakes, Inc. is a division and not a subsidiary of AMREP Corporation.

Request Number Fifty-Eight: AMREP Corporation at times has represented that it is or was the developer of Mid-Florida Lakes.

Request Number Fifty-Nine: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Mid-Florida Lakes, Inc.

Request Number Sixty: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Mid-Florida Lakes, Inc.

[The Next Request for Admission appears at page 11.]

Request Number Sixty-one: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of Lakeland Greens, Inc.

Request Number Sixty-two: A majority of the directors of Lakeland Greens, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Sixty-three: A majority of the officers of Lakeland Greens, Inc. have also been, in the same year, officers or directors of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Sixty-four: The President of Lakeland Greens, Inc. has also been, in the same year, an officer or director of AMREP Corporation for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Sixty-five: Since 1972 Lakeland Greens, Inc. has been engaged in the business of developing a tract of land in Arizona. At one time it planned to sell lots and acreage of said tract to members of the general public, although at this time development has been halted. The size of the tract is in excess of 12,000 acres.

Request Number Sixty-six: Advertisements, promotional literature and reports which would be used by Lakeland Greens, Inc. to advertise and promote the sale of land at Lakeland Greens would be prepared by AMREP Corporation or would be submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Sixty-Seven: Officers or employees of Lakeland Greens, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Lakeland Greens, Inc.

Request Number Sixty-Eight: AMREP Corporation consolidates operating results of Lakeland Greens, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Sixty-Nine: AMREP Corporation at times represents to members of the general public that Lakeland Greens, Inc. is a division and not a subsidiary of AMREP Corporation.

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Request Number Seventy: AMREP Corporation at times has represented that it is or will be the developer of Lakeland Greens, Inc.

Request Number Seventy-one: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Lakeland Greens, Inc.

Request Number Seventy-two: AMAEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Lakeland Greens, Inc.

[The Next Request for Admission appears at page 13.]

Request Number Seventy-Three: For each calendar year since 1967, AMREP Corporation has owned more than 75% of the outstanding voting securities of A & C Realty Corp.

Request Number Seventy-Four: A majority of the directors of A & C Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Seventy-Five: A majority of the officers of A & C Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Seventy-Six: The President of A & C Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Seventy-Seven: Since 1968, A & C Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number Seventy-Eight: Advertisements, promotional literature and reports used by A & C Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Seventy-Nine: Officers or employees of A & C Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of A & C Realty Corp.

Request Number Eighty: AMREP Corporation consolidates operating results of A & C Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Eighty-One: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by A & C Realty Corp. or AMREP Corporation, fail to disclose that A & C Realty Corp. is a subsidiary of AMREP Corporation.

Request Number Eighty-Two: AMREP Corporation has, at times, guaranteed loans or other financial obligations of A & C Realty Corp.

Request Number Eighty-Three: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of A & C Realty Corp.

Request Number Eighty-Four: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of A. M. R. Realty Corp.

Request Number Eighty-Five: A majority of the directors of A. M. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Eighty-Six: A majority of the officers of A. M. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Eighty-Seven: The President of A. M. R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Eighty-Eighty: Since 1971, A. M. R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number Eighty-Nine: Advertisements, promotional literature and reports used by A. M. R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number Ninety: Officers or employees of A. M. R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of A. M. R. Realty Corp.

Request Number Ninety-One: AMREP Corporation consolidates operating results of A. M. R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number Ninety-Two: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by A. M. R. Realty Corp. or AMREP Corporation, fail to disclose that A. M. R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number Ninety-Three: AMREP Corporation has, at times, guaranteed loans or other financial obligations of A. M. R. Realty Corp.

Request Number Ninety-Four: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of A. M. R. Realty Corp.

Request Number Ninety-Five: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of A.S.M. Realty Corp.

Request Number Ninety-Six: A majority of the directors of A.S.M. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Ninety-Seven: A majority of the officers of A.S.M. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Ninety-Eight: The President of A.S.M. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number Ninety-Nine: Since 1971, A.S.M. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 100: Advertisements, promotional literature and reports used by A.S.M. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 101: Officers or employees of A.S.M. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of A.S.M. Realty Corp.

Request Number 102: AMREP Corporation consolidates operating results of A.S.M. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 103: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by A.S.M. Realty Corp. or AMREP Corporation, fail to disclose that A.S.M. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 104: AMREP Corporation has, at times, guaranteed loans or other financial obligations of A.S.M. Realty Corp.

Request Number 105: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of A.S.M. Realty Corp.

Request Number 106: For each calendar year since 1963, AMREP Corporation has owned more than 75% of the outstanding voting securities of A.T.C. Realty Corp.

Request Number 107: A majority of the directors of A.T.C. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 108: A majority of the officers of A.T.C. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 109: The President of A.T.C. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 110: Since 1963, A.T.C. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 111: Advertisements, promotional literature and reports used by A.T.C. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 112: Officers or employees of A.T.C. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of A.T.C. Realty Corp.

Request Number 113: AMREP Corporation consolidates operating results of A.T.C. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 114: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by A.T.C. Realty Corp. or AMREP Corporation, fail to disclose that A.T.C. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 115: AMREP Corporation has, at times, guaranteed loans or other financial obligations of A.T.C. Realty Corp.

Request Number 116: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of A.T.C. Realty Corp.

Request Number 117: For each calendar year since 19 9, AMREP Corporation has owned more than 75% of the outstanding voting securities of B. R. X. Realty Corp.

Request Number 118: A majority of the directors of B. R. X. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AM EP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 119: A majority of the officers of B. R. X. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 120: The President of B. R. X. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 121: Since 19 9, B. R. X. Realty C rp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AM EP Corporation or its subsidiaries.

Request Number 122: Advertisements, promotional literature and reports used by B. R. X. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AM EP Corporation or are submitted to officers, directors or employees of AM EP Corporation for review and approval.

Request Number 123: Officers or employees of B. R. X. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of B. R. X. Realty Corp.

Request Number 124: AMREP Corporation consolidates operating results of B. R. X. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 125: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by B. R. X. Realty Corp. or AM EP Corporation, fail to disclose that B. R. X. Realty Corp. is a subsidiary of AM EP Corporation.

Request Number 126: AM EP Corporation has, at times, guaranteed loans or other financial obligations of B. R. X. Realty Corp.

Request Number 127: AM EP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of B. R. X. Realty Corp.

Request Number 128: For each calendar year since 1967, AMREP Corporation has owned more than 75% of the outstanding voting securities of B.T.G. Realty Corp.

Request Number 129: A majority of the directors of B.T.G. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 130: A majority of the officers of B.T.G. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 131: The President of B.T.G. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 132: Since 1967, B.T.G. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 133: Advertisements, promotional literature and reports used by B.T.G. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 134: Officers or employees of B.T.G. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of B.T.G. Realty Corp.

Request Number 135: AMREP Corporation consolidates operating results of B.T.G. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 136: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by B.T.G. Realty Corp. or AMREP Corporation, fail to disclose that B.T.G. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 137: AMREP Corporation has, at times, guaranteed loans or other financial obligations of B.T.G. Realty Corp.

Request Number 138: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of B.T.G. Realty Corp.

Request Number 139: For each calendar year since 1957, AMREP Corporation has owned more than 75% of the outstanding voting securities of C & A Realty Corp.

Request Number 140: A majority of the directors of C & A Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 141: A majority of the officers of C & A Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 142: The President of C & A Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 143: Since 1957, C & A Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 144: Advertisements, promotional literature and reports used by C & A Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 145: Officers or employees of C & A Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of C & A Realty Corp.

Request Number 146: AMREP Corporation consolidates operating results of C & A Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 147: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by C & A Realty Corp. or AMREP Corporation, fail to disclose that C & A Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 148: AMREP Corporation has, at times, guaranteed loans or other financial obligations of C & A Realty Corp.

Request Number 149: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of C & A Realty Corp.

Request Number 150: For each calendar year since 19[illegible]3, AMREP Corporation has owned more than 75% of the outstanding voting securities of D.C.R. Realty Corp.

Request Number 151: A majority of the directors of D.C.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 152: A majority of the officers of D.C.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 153: The President of D.C.R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 154: Since 1968, D.C.R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 155: Advertisements, promotional literature and reports used by D.C.R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 156: Officers or employees of D.C.R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of D.C.R. Realty Corp.

Request Number 157: AMREP Corporation consolidates operating results of D.C.R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 158: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by D.C.R. Realty Corp. or AMREP Corporation, fail to disclose that D.C.R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 159: AMREP Corporation has, at times, guaranteed loans or other financial obligations of D.C.R. Realty Corp.

Request Number 160: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of D.C.R. Realty Corp.

Request Number 161: For each calendar year since 19[illegible]3, AMREP Corporation has owned more than 75% of the outstanding voting securities of D. N. R. Realty Corp.

Request Number 162: A majority of the directors of D. N. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 163: A majority of the officers of D. N. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 164: The President of D. N. R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 165: Since 19[illegible]8, D. N. R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 166: Advertisements, promotional literature and reports used by D. N. R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 167: Officers or employees of D. N. R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of D. N. R. Realty Corp.

Request Number 168: AMREP Corporation consolidates operating results of D. N. R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 169: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by D. N. R. Realty Corp. or AMREP Corporation, fail to disclose that D. N. R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 170: AMREP Corporation has, at times, guaranteed loans or other financial obligations of D. N. R. Realty Corp.

Request Number 171: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of D. N. R. Realty Corp.

Request Number 172: For each calendar year since 1973, AMREP Corporation has owned more than 75% of the outstanding voting securities of Double R Realty Corp.

Request Number 173: A majority of the directors of Double R Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 174: A majority of the officers of Double R Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 175: The President of Double R Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 176: Since 1973, Double R Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 177: Advertisements, promotional literature and reports used by Double R Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 178: Officers or employees of Double R Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Double R Realty Corp.

Request Number 179: AMREP Corporation consolidates operating results of Double R Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 180: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Double R Realty Corp. or AMREP Corporation, fail to disclose that Double R Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 181: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Double R Realty Corp.

Request Number 182: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Double R Realty Corp.

Request Number 183: For each calendar year since 1957, AMREP Corporation has owned more than 75% of the outstanding voting securities of F & D Realty Corp.

Request Number 184: A majority of the directors of F & D Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 185: A majority of the officers of F & D Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 186: The President of F & D Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 187: Since 1957, F & D Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 188: Advertisements, promotional literature and reports used by F & D Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 189: Officers or employees of F & D Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of F & D Realty Corp.

Request Number 190: AMREP Corporation consolidates operating results of F & D Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 191: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by F & D Realty Corp. or AMREP Corporation, fail to disclose that F & D Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 192: AMREP Corporation has, at times, guaranteed loans or other financial obligations of F & D Realty Corp.

Request Number 193: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of F & D Realty Corp.

Request Number 194: For each calendar year since 1957, AMREP Corporation has owned more than 75% of the outstanding voting securities of H.C.F. Realty Corp.

Request Number 195: A majority of the directors of H.C.F. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 196: A majority of the officers of H.C.F Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 197: The President of H.C.F. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 198: Since 1957, H.C.F. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 199: Advertisements, promotional literature and reports used by H.C.F. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 200: Officers or employees of H.C.F. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of H.C.F. Realty Corp.

Request Number 201: AMREP Corporation consolidates operating results of H.C.F. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 202: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by H.C.F. Realty Corp. or AMREP Corporation, fail to disclose that H.C.F. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 203: AMREP Corporation has, at times, guaranteed loans or other financial obligations of H.C.F. Realty Corp.

Request Number 204: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of H.C.F. Realty Corp.

Request Number 205: For each calendar year since 1957, AMFEP Corporation has owned more than 75% of the outstanding voting securities of Garden Realty Corp.

Request Number 206: A majority of the directors of Garden Realty Corp. have also been, in the same year, officers or directors of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 207: A majority of the officers of Garden Realty Corp. have also been, in the same year, officers or directors of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 208: The President of Garden Realty Corp. has also been, in the same year, an officer or director of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 209: Since 1957, Garden Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMFEP Corporation or its subsidiaries.

Request Number 210: Advertisements, promotional literature and reports used by Garden Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMFEP Corporation or its subsidiaries, are prepared by AMFEP Corporation or are submitted to officers, directors or employees of AMFEP Corporation for review and approval.

Request Number 211: Officers or employees of Garden Realty Corp. regularly report to directors, officers or employees of AMFEP Corporation with respect to the operation of Garden Realty Corp.

Request Number 212: AMFEP Corporation consolidates operating results of Garden Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 213: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Garden Realty Corp. or AMFEP Corporation, fail to disclose that Garden Realty Corp. is a subsidiary of AMFEP Corporation.

Request Number 214: AMFEP Corporation has, at times, guaranteed loans or other financial obligations of Garden Realty Corp.

Request Number 215: AMFEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Garden Realty Corp.

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Request Number 227: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of H. N. Y. Realty Corp.

Request Number 228: A majority of the directors of H. N. Y. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 229: A majority of the officers of H. N. Y. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 230: The President of H. N. Y. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 231: Since 1972, H. N. Y. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 232: Advertisements, promotional literature and reports used by H. N. Y. Realty Corp. to advertise and promote the sale of one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 233: Officers or employees of H. N. Y. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of H. N. Y. Realty Corp.

Request Number 234: AMREP Corporation consolidates operating results of H. N. Y. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 235: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by H. N. Y. Realty Corp. or AMREP Corporation, fail to disclose the H. N. Y. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 236: AMREP Corporation has, at times, guaranteed loans or other financial obligations of H. N. Y. Realty Corp.

Request Number 237: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of H. N. Y. Realty Corp.

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Request Number 238: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of I.D.P. Realty Corp.

Request Number 239: A majority of the directors of I.D.P. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 240: A majority of the officers of I.D.P. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 241: The President of I.D.P. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 242: Since 1971, I.D.P. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 243: Advertisements, promotional literature and reports used by I.D.P. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 244: Officers or employees of I.D.P. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of I.D.P. Realty Corp.

Request Number 245: AMREP Corporation consolidates operating results of I.D.P. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 246: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by I.D.P. Realty Corp. or AMREP Corporation, fail to disclose that I.D.P. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 247: AMREP Corporation has, at times, guaranteed loans or other financial obligations of I.D.P. Realty Corp.

Request Number 248: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of I.D.P. Realty Corp.

Request Number 249: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of J.D.M. Realty Corp.

Request Number 250: A majority of the directors of J.D.M. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 251: A majority of the officers of J.D.M. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 252: The President of J.D.M. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 253: Since 1971, J.D.M. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 254: Advertisements, promotional literature and reports used by J.D.M. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 255: Officers or employees of J.D.M. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of J.D.M. Realty Corp.

Request Number 256: AMREP Corporation consolidates operating results of J.D.M. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 257: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by J.D.M. Realty Corp. or AMREP Corporation, fail to disclose that J.D.M. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 258: AMREP Corporation has, at times, guaranteed loans or other financial obligations of J.D.M. Realty Corp.

Request Number 259: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of J.D.M. Realty Corp.

Request Number 250: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of J.V.C. Realty Corp.

Request Number 251: A majority of the directors of J.V.C. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 252: A majority of the officers of J.V.C. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 253: The President of J.V.C. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 254: Since 1971, J.V.C. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 255: Advertisements, promotional literature and reports used by J.V.C. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 256: Officers or employees of J.V.C. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of J.V.C. Realty Corp.

Request Number 257: AMREP Corporation consolidates operating results of J.V.C. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 258: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by J.V.C. Realty Corp. or AMREP Corporation, fail to disclose that J.V.C. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 259: AMREP Corporation has, at times, guaranteed loans or other financial obligations of J.V.C. Realty Corp.

Request Number 270: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of J.V.C. Realty Corp.

Request Number 215: For each calendar year since 1968, AMREP Corporation has owned more than 75% of the outstanding voting securities of G.S.R. Realty Corp.

Request Number 217: A majority of the directors of G.S.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 218: A majority of the officers of G.S.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 219: The President of G.S.R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 220: Since 1968, G.S.R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 221: Advertisements, promotional literature and reports used by G.S.R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 222: Officers or employees of G.S.R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of G.S.R. Realty Corp.

Request Number 223: AMREP Corporation consolidates operating results of G.S.R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 224: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by G.S.R. Realty Corp. or AMREP Corporation, fail to disclose that G.S.R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 225: AMREP Corporation has, at times, guaranteed loans or other financial obligations of G.S.R. Realty Corp.

Request Number 226: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of G.S.R. Realty Corp.

Request Number 282: For each calendar year since 1968, AMREP Corporation has owned more than 75% of the outstanding voting securities of K. L. X. Realty Corp.

Request Number 283: A majority of the directors of K. L. X. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 284: A majority of the officers of K. L. X. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 285: The President of K. L. X. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 286: Since 1968, K. L. X. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 287: Advertisements, promotional literature and reports used by K. L. X. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 288: Officers or employees of K. L. X. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of K. L. X. Realty Corp.

Request Number 289: AMREP Corporation consolidates operating results of K. L. X. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 290: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by K. L. X. Realty Corp. or AMREP Corporation, fail to disclose that K. L. X. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 291: AMREP Corporation has, at times, guaranteed loans or other financial obligations of K. L. X. Realty Corp.

Request Number 292: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of K. L. X. Realty Corp.

Request Number 293: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of L.J.B. Realty Corp.

Request Number 294: A majority of the directors of L.J.B. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 295: A majority of the officers of L.J.B. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 296: The President of L.J.B. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 297: Since 1971, L.J.B. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 298: Advertisements, promotional literature and reports used by L.J.B. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 299: Officers or employees of L.J.B. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of L.J.B. Realty Corp.

Request Number 300: AMREP Corporation consolidates operating results of L.J.B. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 301: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by L.J.B. Realty Corp. or AMREP Corporation, fail to disclose that L.J.B. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 302: AMREP Corporation has, at times, guaranteed loans or other financial obligations of L.J.B. Realty Corp.

Request Number 303: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of L.J.B. Realty Corp.

Request Number 304: For each calendar year since 19 9, AMEP Corporation has owned more than 75% of the outstanding voting securities of L. T. A. Realty Corp.

Request Number 305: A majority of the directors of L. T. A. Realty Corp. have also been, in the same year, officers or directors of AMEP Corporation, for each year in which AMEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 306: A majority of the officers of L. T. A. Realty Corp. have also been, in the same year, officers or directors of AMEP Corporation, for each year in which AMEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 307: The President of L. T. A. Realty Corp. has also been, in the same year, an officer or director of AMEP Corporation, for each year in which AMEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 308: Since 19 9, L. T. A. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMEP Corporation or its subsidiaries.

Request Number 309: Advertisements, promotional literature and reports used by L. T. A. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMEP Corporation or its subsidiaries, are prepared by AMEP Corporation or are submitted to officers, directors or employees of AMEP Corporation for review and approval.

Request Number 310: Officers or employees of L. T. A. Realty Corp. regularly report to directors, officers or employees of AMEP Corporation with respect to the operation of L. T. A. Realty Corp.

Request Number 311: AMEP Corporation consolidates operating results of L. T. A. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 312: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by L. T. A. Realty Corp. or AMEP Corporation, fail to disclose that L. T. A. Realty Corp. is a subsidiary of AMEP Corporation.

Request Number 313: AMEP Corporation has, at times, guaranteed loans or other financial obligations of L. T. A. Realty Corp.

Request Number 314: AMEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of L. T. A. Realty Corp.

Request Number 315: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of L. T. P. Realty Corp.

Request Number 316: A majority of the directors of L. T. P. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 317: A majority of the officers of L. T. P. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 318: The President of L. T. P. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 319: Since 1971, L. T. P. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 320: Advertisements, promotional literature and reports used by L. T. P. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 321: Officers or employees of L. T. P. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of L. T. P. Realty Corp.

Request Number 322: AMREP Corporation consolidates operating results of L. T. P. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 323: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by L. T. P. Realty Corp. or AMREP Corporation, fail to disclose that L. T. P. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 324: AMREP Corporation has, at times, guaranteed loans or other financial obligations of L. T. P. Realty Corp.

Request Number 325: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of L. T. P. Realty Corp.

Request Number 32 : For each calendar year since 19 1, AMREP Corporation has owned more than 75% of the outstanding voting securities of Marion Realty, Inc.

Request Number 327: A majority of the directors of Marion Realty, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 328: A majority of the officers of Marion Realty, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 329: The President of Marion Realty, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 330: Since 1961, Marion Realty, Inc. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 331: Advertisements, promotional literature and reports used by Marion Realty, Inc. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 332: Officers or employees of Marion Realty, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Marion Realty, Inc.

Request Number 333: AMREP Corporation consolidates operating results of Marion Realty, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 334: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Marion Realty, Inc. or AMREP Corporation, fail to disclose that Marion Realty, Inc. is a subsidiary of AMREP Corporation.

Request Number 335: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Marion Realty, Inc.

Request Number 33 : AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Marion Realty, Inc.

Request Number 337: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of M. D. F. Realty Corp.

Request Number 338: A majority of the directors of M. D. F. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 339: A majority of the officers of M. D. F. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 340: The President of M. D. F. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 341: Since 1971, M. D. F. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 342: Advertisements, promotional literature and reports used by M. D. F. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 343: Officers or employees of M. D. F. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of M. D. F. Realty Corp.

Request Number 344: AMREP Corporation consolidates operating results of M. D. F. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 345: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by M. D. F. Realty Corp. or AMREP Corporation, fail to disclose that M. D. F. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 346: AMREP Corporation has, at times, guaranteed loans or other financial obligations of M. D. F. Realty Corp.

Request Number 347: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of M. D. F. Realty Corp.

Request Number 348: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Mid-Florida Lakes of Illinois, Inc.

Request Number 349: A majority of the directors of Mid-Florida Lakes of Illinois, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 350: A majority of the officers of Mid-Florida Lakes of Illinois, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 351: The President of Mid-Florida Lakes of Illinois, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 352: Since 1971, Mid-Florida Lakes of Illinois, Inc. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 353: Advertisements, promotional literature and reports used by Mid-Florida Lakes of Illinois, Inc. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 354: Officers or employees of Mid-Florida Lakes of Illinois, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Mid-Florida Lakes of Illinois, Inc.

Request Number 355: AMREP Corporation consolidates operating results of Mid-Florida Lakes of Illinois, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 356: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Mid-Florida Lakes of Illinois, Inc. or AMREP Corporation, fail to disclose that Mid-Florida Lakes of Illinois, Inc. is a subsidiary of AMREP Corporation.

Request Number 357: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Mid-Florida Lakes of Illinois, Inc.

Request Number 358: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Mid-Florida Lakes of Illinois, Inc.

Request Number 350: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Mid-Florida Lakes of New York, Inc.

Request Number 3[illegible]0: A majority of the directors of Mid-Florida Lakes of New York, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 3[illegible]1: A majority of the officers of Mid-Florida Lakes of New York, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 3[illegible]2: The President of Mid-Florida Lakes of New York, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 3[illegible]3: Since 1971, Mid-Florida Lakes of New York, Inc. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 3[illegible]4: Advertisements, promotional literature and reports used by Mid-Florida Lakes of New York, Inc. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 3[illegible]5: Officers or employees of Mid-Florida Lakes of New York, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Mid-Florida Lakes of New York, Inc.

Request Number 3[illegible]6: AMREP Corporation consolidates operating results of Mid-Florida Lakes of New York, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 3[illegible]7: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Mid-Florida Lakes of New York, Inc. or AMREP Corporation, fail to disclose that Mid-Florida Lakes of New York, Inc. is a subsidiary of AMREP Corporation.

Request Number 3[illegible]8: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Mid-Florida Lakes of New York, Inc.

Request Number 3[illegible]9: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Mid-Florida Lakes of New York, Inc.

Request Number 370: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of M. I. L. Realty Corp.

Request Number 371: A majority of the directors of M. I. L. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 372: A majority of the officers of M. I. L. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 373: The President of M. I. L. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 374: Since 1971, M. I. L. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 375: Advertisements, promotional literature and reports used by M. I. L. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 376: Officers or employees of M. I. L. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of M. I. L. Realty Corp.

Request Number 377: AMREP Corporation consolidates operating results of M. I. L. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 378: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by M. I. L. Realty Corp. or AMREP Corporation, fail to disclose that M. I. L. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 379: AMREP Corporation has, at times, guaranteed loans or other financial obligations of M. I. L. Realty Corp.

Request Number 380: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of M. I. L. Realty Corp.

Request Number 381: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of O. L. T. Realty Corp.

Request Number 382: A majority of the directors of O. L. T. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 383: A majority of the officers of O. L. T. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 384: The President of O. L. T. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 385: Since 1972, O. L. T. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 386: Advertisements, promotional literature and reports used by O. L. T. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 387: Officers or employees of O. L. T. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of O. L. T. Realty Corp.

Request Number 388: AMREP Corporation consolidates operating results of O. L. T. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 389: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by O. L. T. Realty Corp. or AMREP Corporation, fail to disclose that O. L. T. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 390: AMREP Corporation has, at times, guaranteed loans or other financial obligations of O. L. T. Realty Corp.

Request Number 391: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of O. L. T. Realty Corp.

Request Number 392: For each calendar year since 19[illegible]9, AMREP Corporation has owned more than 75% of the outstanding voting securities of P.M.A. Realty Corp.

Request Number 393: A majority of the directors of P.M.A. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 394: A majority of the officers of P.M.A. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 395: The President of P.M.A. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 39[illegible]: Since 19[illegible]9, P.M.A. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 397: Advertisements, promotional literature and reports used by P.M.A. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 398: Officers or employees of P.M.A. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of P.M.A. Realty Corp.

Request Number 399: AMREP Corporation consolidates operating results of P.M.A. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 400: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by P.M.A. Realty Corp. or AMREP Corporation, fail to disclose that P.M.A. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 401: AMREP Corporation has, at times, guaranteed loans or other financial obligations of P.M.A. Realty Corp.

Request Number 402: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of P.M.A. Realty Corp.

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Request Number 403: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Rio Rancho Estates of Nevada, Inc.

Request Number 404: A majority of the directors of Rio Rancho Estates of Nevada, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 405: A majority of the officers of Rio Rancho Estates of Nevada, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 406: The President of Rio Rancho Estates of Nevada, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 407: Since 1971, Rio Rancho Estates of Nevada, Inc. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 408: Advertisements, promotional literature and reports used by Rio Rancho Estates of Nevada, Inc. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 409: Officers or employees of Rio Rancho Estates of Nevada, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Rio Rancho Estates of Nevada, Inc.

Request Number 410: AMREP Corporation consolidates operating results of Rio Rancho Estates of Nevada, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 411: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Rio Rancho Estates of Nevada, Inc. or AMREP Corporation, fail to disclose that Rio Rancho Estates of Nevada, Inc. is a subsidiary of AMREP Corporation.

Request Number 412: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Rio Rancho Estates of Nevada, Inc.

Request Number 413: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Rio Rancho Estates of Nevada, Inc.

Request Number 414: For each calendar year since 19 8, AM EP Corporation has owned more than 75% of the outstanding voting securities of R.S.C. Realty, Corp.

Request Number 415: A majority of the directors of R.S.C. Realty, Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 41 : A majority of the officers of R.S.C. Realty, Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AM EP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 417: The President of R.S.C. Realty, Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 418: Since 19 8, R.S.C. Realty, Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AM EP Corporation or its subsidiaries.

Request Number 419: Advertisements, promotional literature and reports used by R.S.C. Realty, Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AM EP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AM EP Corporation for review and approval.

Request Number 420: Officers or employees of R.S.C. Realty, Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of R.S.C. Realty, Corp.

Request Number 421: AMREP Corporation consolidates operating results of R.S.C. Realty, Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 422: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by R.S.C. Realty, Corp. or AM EP Corporation, fail to disclose that R.S.C. Realty, Corp. is a subsidiary of AMREP Corporation.

Request Number 423: AMREP Corporation has, at times, guaranteed loans or other financial obligations of R.S.C. Realty, Corp.

Request Number 424: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of R.S.C. Realty, Corp.

Request Number 425: For each calendar year since 1957, AMREP Corporation has owned more than 75% of the outstanding voting securities of S.G.R. Realty Corp.

Request Number 426: A majority of the directors of S.G.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 427: A majority of the officers of S.G.R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 428: The President of S.G.R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 429: Since 1957, S.G.R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 430: Advertisements, promotional literature and reports used by S.G.R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 431: Officers or employees of S.G.R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of S.G.R. Realty Corp.

Request Number 432: AMREP Corporation consolidates operating results of S.G.R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 433: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by S.G.R. Realty Corp. or AMREP Corporation, fail to disclose that S.G.R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 434: AMREP Corporation has, at times, guaranteed loans or other financial obligations of S.G.R. Realty Corp.

Request Number 435: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of S.G.R. Realty Corp.

Request Number 436: For each calendar year since 1968, AMREP Corporation has owned more than 75% of the outstanding voting securities of S & J Realty Corp.

Request Number 437: A majority of the directors of S & J Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 438: A majority of the officers of S & J Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 439: The President of S & J Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 440: Since 1968, S & J Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 441: Advertisements, promotional literature and reports used by S & J Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 442: Officers or employees of S & J Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of S & J Realty Corp.

Request Number 443: AMREP Corporation consolidates operating results of S & J Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 444: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by S & J Realty Corp. or AMREP Corporation, fail to disclose that S & J Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 445: AMREP Corporation has, at times, guaranteed loans or other financial obligations of S & J Realty Corp.

Request Number 446: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of S & J Realty Corp.

Request Number 447: For each calendar year since 1957, AMREP Corporation has owned more than 75% of the outstanding voting securities of S & W Realty Corp.

Request Number 448: A majority of the directors of S & W Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 449: A majority of the officers of S & W Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 450: The President of S & W Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 451: Since 1957, S & W Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 452: Advertisements, promotional literature and reports used by S & W Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 453: Officers or employees of S & W Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of S & W Realty Corp.

Request Number 454: AMREP Corporation consolidates operating results of S & W Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 455: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by S & W Realty Corp. or AMREP Corporation, fail to disclose that S & W Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 456: AMREP Corporation has, at times, guaranteed loans or other financial obligations of S & W Realty Corp.

Request Number 457: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of S & W Realty Corp.

Request Number 448: For each calendar year since 19 8, AMREP Corporation has owned more than 75% of the outstanding voting securities of T.M. R. Realty Corp.

Request Number 449: A majority of the directors of T.M. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 450: A majority of the officers of T.M. R. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 451: The President of T.M. R. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 452: Since 19 8, T.M. R. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 453: Advertisements, promotional literature and reports used by T.M. R. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 454: Officers or employees of T.M. R. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of T.M. R. Realty Corp.

Request Number 455: AMREP Corporation consolidates operating results of T.M. R. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 456: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by T.M. R. Realty Corp. or AMREP Corporation, fail to disclose that T.M. R. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 457: AMREP Corporation has, at times, guaranteed loans or other financial obligations of T.M. R. Realty Corp.

Request Number 458: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of T.M. R. Realty Corp.

Request Number 469: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of T. L. F. Realty Corp.

Request Number 470: A majority of the directors of T. L. F. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 471: A majority of the officers of T. L. F. Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 472: The President of T. L. F. Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 473: Since 1972, T. L. F. Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 474: Advertisements, promotional literature and reports used by T. L. F. Realty Corp. to advertise and promote the sale of land at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 475: Officers or employees of T. L. F. Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of T. L. F. Realty Corp.

Request Number 476: AMREP Corporation consolidates operating results of T. L. F. Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 477: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by T. L. F. Realty Corp. or AMREP Corporation, fail to disclose that T. L. F. Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 478: AMREP Corporation has, at times, guaranteed loans or other financial obligations of T. L. F. Realty Corp.

Request Number 479: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of T. L. F. Realty Corp.

Request Number 480: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of Irving N. Roth Realty Corp.

Request Number 481: A majority of the directors of Irving N. Roth Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 482: A majority of the officers of Irving N. Roth Realty Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 483: The President of Irving N. Roth Realty Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 484: Since 1972, Irving N. Roth Realty Corp. has been engaged, as an agent, in the offering for sale and sale of land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 485: Advertisements, promotional literature and reports used by Irving N. Roth Realty Corp. to advertise and promote the sale at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries, are prepared by AMREP Corporation or are submitted to officers, directors or employees of AMREP Corporation for review and approval.

Request Number 486: Officers or employees of Irving N. Roth Realty Corp. regularly report to directors, officers or employees of AMREP Corporation with respect t the operation of Irving N. Roth Realty Corp.

Request Number 487: AMREP Corporation consolidates operating results of Irving N. Roth Realty Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 488: All advertisements, promotional material and prepared printed matter given to prospective purchasers, whether prepared by Irving N. Roth Realty Corp. or AMREP Corporation, fail to disclose the Irving N. Roth Realty Corp. is a subsidiary of AMREP Corporation.

Request Number 489: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Irving N. Roth Realty Corp.

Request Number 490: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Irving N. Roth Realty Corp.

Request Number 491: For each calendar year since 1961, AMAEP Corporation has owned more than 75% of the outstanding voting securities of Albuquerque Utilities Corporation.

Request Number 492: A majority of the directors of Albuquerque Utilities Corporation have also been, in the same year, officers or directors of AMAEP Corporation, for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 493: A majority of the officers of Albuquerque Utilities Corporation have also been, in the same year, officers or directors of AMAEP Corporation, for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 494: The President of Albuquerque Utilities Corporation has also been, in the same year, an officer or director of AMAEP Corporation, for each year in which AMAEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 495: Since 1961, Albuquerque Utilities Corporation has been engaged in the business of providing certain utility services to land located in one or more of the subdivisions owned by AMAEP Corporation or its subsidiaries.

Request Number 496: Officers or employees of Albuquerque Utilities Corporation regularly report to directors, officers or employees of AMAEP Corporation with respect to the operation of Albuquerque Utilities Corporation.

Request Number 497: AMAEP Corporation consolidates operating results of Albuquerque Utilities Corporation with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 498: AMAEP Corporation has, at times, guaranteed loans or other financial obligations of Albuquerque Utilities Corporation.

Request Number 499: AMAEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Albuquerque Utilities Corporation.

Request Number 500: For each calendar year since 1969, AMREP Corporation has owned more than 75% of the outstanding voting securities of Florida Ridge Utilities Corp.

Request Number 501: A majority of the directors of Florida Ridge Utilities Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 502: A majority of the officers of Florida Ridge Utilities Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 503: The President of Florida Ridge Utilities Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 504: Since 1969, Florida Ridge Utilities Corp. has been engaged in the business of providing certain utility services to land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 505: Officers or employees of Florida Ridge Utilities Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Florida Ridge Utilities Corp.

Request Number 506: AMREP Corporation consolidates operating results of Florida Ridge Utilities Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 507: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Florida Ridge Utilities Corp.

Request Number 508: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Florida Ridge Utilities Corp.

Request Number 509: For each calendar year since 1973, AMREP Corporation has owned more than 75% of the outstanding voting securities of El Dorado Utilities Inc.

Request Number 510: A majority of the directors of El Dorado Utilities Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 511: A majority of the officers of El Dorado Utilities Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 512: The President of El Dorado Utilities Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 513: Since 1973, El Dorado Utilities Inc. has been engaged in the business of providing certain utility services to land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 514: Officers or employees of El Dorado Utilities Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of El Dorado Utilities Inc.

Request Number 515: AMREP Corporation consolidates operating results of El Dorado Utilities Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 516: AMREP Corporation has, at times, guaranteed loans or other financial obligations of El Dorado Utilities Inc.

Request Number 517: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of El Dorado Utilities Inc.

Request Number 518: For each calendar year since 1973, AMREP Corporation has owned more than 75% of the outstanding voting securities of Shores Sanitation Service, Inc.

Request Number 519: A majority of the directors of Shores Sanitation Services, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 520: A majority of the officers of Shores Sanitation Services, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 521: The President of Shores Sanitation Services, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 522: Since 1973, Shores Sanitation Services, Inc. has been engaged in the business of providing certain utility services to land located in one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 523: Officers or employees of Shores Sanitation Services, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Shores Sanitation Services, Inc.

Request Number 524: AMREP Corporation consolidates operating results of Shores Sanitation Services, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 525: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Shores Sanitation Services, Inc.

Request Number 526: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Shores Sanitation Services, Inc.

Request Number 527: For each calendar year since 1967, AMREP Corporation has owned more than 75% of the outstanding voting securities of Panorama Inns, Inc.

Request Number 528: A majority of the directors of Panorama Inns, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 529: A majority of the officers of Panorama Inns, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 530: The President of Panorama Inns, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 531: Since 1967, Panorama Inns, Inc. has been engaged in the business of operating one or more motels at or adjacent to one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 532: Officers or employees of Panorama Inns, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Panorama Inns, Inc.

Request Number 533: AMREP Corporation consolidates operating results of Panorama Inns, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 534: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Panorama Inns, Inc.

Request Number 535: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Panorama Inns, Inc.

Request Number 536: For each calendar year since 1969, AMREP Corporation has owned more than 75% of the outstanding voting securities of Panorama Inn of Florida, Inc.

Request Number 537: A majority of the directors of Panorama Inn of Florida, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 538: A majority of the officers of Panorama Inn of Florida, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 539: The President of Panorama Inn of Florida, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 540: Since 1969, Panorama Inn of Florida, Inc. has been engaged in the business of operating one or more motels at or adjacent to one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 541: Officers or employees of Panorama Inn of Florida, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Panorama Inn of Florida, Inc.

Request Number 542: AMREP Corporation consolidates operating results of Panorama Inn of Florida, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 543: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Panorama Inn of Florida, Inc.

Request Number 544: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Panorama Inn of Florida, Inc.

Request Number 545: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Panorama Inns of Missouri, Inc.

Request Number 546: A majority of the directors of Panorama Inns of Missouri, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 547: A majority of the officers of Panorama Inns of Missouri, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 548: The President of Panorama Inns of Missouri Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 549: Since 1971, Panorama Inns of Missouri, Inc. has been engaged in the business of operating one or more motels at or adjacent to one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 550: Officers or employees of Panorama Inns of Missouri, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Panorama Inns of Missouri, Inc.

Request Number 551: AMREP Corporation consolidates operating results of Panorama Inns of Missouri, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 552: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Panorama Inns of Missouri, Inc.

Request Number 553: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Panorama Inns of Missouri, Inc.

Request Number 554: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Silver Springs Shores Golf & Country Club, Inc.

Request Number 555: A majority of the directors of Silver Springs Shores Golf & Country Club, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 556: A majority of the officers of Silver Springs Shores Golf & Country Club, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 557: The President of Silver Springs Shores Golf & Country Club, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 558: Since 1970, Silver Springs Shores Golf & Country Club, Inc. has been engaged in the business of operating a recreational facility which includes a golf course and clubhouse at or adjacent to Silver Springs Shores, one of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 559: Officers or employees of Silver Springs Shores Golf & Country Club, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Silver Springs Shores Golf & Country Club, Inc.

Request Number 560: AMREP Corporation consolidates operating results of Silver Springs Shores Golf & Country Club, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 561: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Silver Springs Shores Golf & Country Club, Inc.

Request Number 562: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Silver Springs Shores Golf & Country Club, Inc.

Request Number 563: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Rio Rancho Golf & Country Club, Inc.

Request Number 564: A majority of the directors of Rio Rancho Golf & Country Club, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 565: A majority of the officers of Rio Rancho Golf & Country Club, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 566: The President of Rio Rancho Golf & Country Club, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 567: Since 1970, Rio Rancho Golf & Country Club, Inc. has been engaged in the business of operating a recreational facility which includes a golf course and clubhouse at or adjacent to Rio Rancho Estates, one of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 568: Officers or employees of Rio Rancho Golf & Country Club, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Rio Rancho Golf & Country Club, Inc.

Request Number 569: AMREP Corporation consolidates operating results of Rio Rancho Golf & Country Club, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 570: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Rio Rancho Golf & Country Club, Inc.

Request Number 571: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Rio Rancho Golf & Country Club, Inc.

Request Number 572: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Holiday Shores Tours, Inc.

Request Number 573: A majority of the directors of Holiday Shores Tours, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 574: A majority of the officers of Holiday Shores Tours, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 575: The President of Holiday Shores Tours, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 576: Since 1970, Holiday Shores Tours, Inc. has been engaged in the business of operating inspection tours for purchasers or prospective purchasers of land, houses or condominiums at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 577: Officers or employees of Holiday Shores Tours, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Holiday Shores Tours, Inc.

Request Number 578: AMREP Corporation consolidates operating results of Holiday Shores Tours, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 579: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Holiday Shores Tours, Inc.

Request Number 580: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Holiday Shores Tours, Inc.

Request Number 581: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Golden West Patio Apartments, Inc.

Request Number 582: A majority of the directors of Golden West Patio Apartments, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 583: A majority of the officers of Golden West Patio Apartments, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 584: The President of Golden West Patio Apartments, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 585: Since 1970, Golden West Patio Apartments, Inc. has been engaged in the business of operating rental apartments at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 586: Since 1970, Golden West Patio Apartments, Inc. has been engaged in the business of providing services to condominium units at one or more of the subdivisions owned by AMREP Corporation or its subsidiaries.

Request Number 587: Officers or employees of Golden West Patio Apartments, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Golden West Patio Apartments, Inc.

Request Number 588: AMREP Corporation consolidates operating results of Golden West Patio Apartments, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 589: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Golden West Patio Apartments, Inc.

Request Number 590: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Golden West Patio Apartments, Inc.

Request Number 591: For each calendar year since 1962, AMREP Corporation has owned more than 75% of the outstanding voting securities of Silver Springs Hills, Inc.

Request Number 592: A majority of the directors of Silver Springs Hills, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 593: A majority of the officers of Silver Springs Hills, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 594: The President of Silver Springs Hills, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 595: Officers or employees of Silver Springs Hills, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Silver Springs Hills, Inc.

Request Number 596: AMREP Corporation consolidates operating results of Silver Springs Hills, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 597: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Silver Springs Hills, Inc.

Request Number 598: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Silver Springs Hills, Inc.

Request Number 599: For each calendar year since 1962, AMREP Corporation has owned more than 75% of the outstanding voting securities of Silver Springs Lakes Estates, Inc.

Request Number 600: A majority of the directors of Silver Springs Lakes Estates Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 601: A majority of the officers of Silver Springs Lakes Estates, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 602: The President of Silver Springs Lakes Estates, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 603: Officers or employees of Silver Springs Lakes Estates, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Silver Springs Lakes Estates, Inc.

Request Number 604: AMREP Corporation consolidates operating results of Silver Springs Lakes Estates, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 605: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Silver Springs Lakes Estates, Inc.

Request Number 606: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Silver Springs Lakes Estates, Inc.

Request Number 607: For each calendar year since 1968, AMREP Corporation has owned more than 75% of the outstanding voting securities of West Mesa Manufacturing Company.

Request Number 608: A majority of the directors of West Mesa Manufacturing Company have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 609: A majority of the officers of West Mesa Manufacturing Company have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 610: The President of West Mesa Manufacturing Company has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securiti

Request Number 611: Officers or employees of West Mesa Manufacturing Company regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of West Mesa Manufacturing Company.

Request Number 612: AMREP Corporation consolidates operating results of West Mesa Manufacturing Company with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 613: AMREP Corporation has, at times, guaranteed loans or other financial obligations of West Mesa Manufacturing Company.

Request Number 614: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of West Mesa Manufacturing Company.

Request Number 615: For each calendar year since 1972, AMREP Corporation has owned more than 75% of the outstanding voting securities of Rolling Greens, Inc.

Request Number 616: A majority of the directors of Rolling Greens, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 617: A majority of the officers Rolling Greens, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 618: The President of Rolling Greens, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 619: Officers or employees of Rolling Greens, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Rolling Greens, Inc.

Request Number 620: AMREP Corporation consolidates operating results of Rolling Greens, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 621: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Rolling Greens, Inc.

Request Number 622: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Rolling Greens, Inc.

Request Number 623: For each calendar year since the date of incorporation, AMREP Corporation has owned more than 75% of the outstanding voting securities of American Realty & Petroleum Corp.

Request Number 624: A majority of the directors of American Realty & Petroleum Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 625: A majority of the officers of American Realty & Petroleum Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 626: The President of American Realty & Petroleum Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 627: Officers or employees of American Realty & Petroleum Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of American Realty & Petroleum Corp.

Request Number 628: AMREP Corporation consolidates operating results of American Realty & Petroleum Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 629: AMREP Corporation has, at times, guaranteed loans or other financial obligations of American Realty & Petroleum Corp.

Request Number 630: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of American Realty & Petroleum Corp.

Request Number 631: For each calendar year since 1963, AMREP Corporation has owned more than 75% of the outstanding voting securities of AMREP Construction Corporation.

Request Number 632: A majority of the directors of AMREP Construction Corporation have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 633: A majority of the officers AMREP Construction Corporation have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 634: The President of AMREP Construction Corporation has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 635: Officers or employees of AMREP Construction Corporation regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of AMREP Construction Corporation.

Request Number 636: AMREP Corporation consolidates operating results of AMREP Construction Corporation with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 637: AMREP Corporation has, at times, guaranteed loans or other financial obligations of AMREP Construction Corporation.

Request Number 638: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of AMREP Construction Corporation.

Request Number 39: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of AMREP Credit Corporation.

Request Number 40: A majority of the directors of AMREP Credit Corporation have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 41: A majority of the officers AMREP Credit Corporation have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 42: The President of AMREP Credit Corporation has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 43: Officers or employees of AMREP Credit Corporation regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of AMREP Credit Corporation.

Request Number 44: AMREP Corporation consolidates operating results of AMREP Credit Corporation with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 45: AMREP Corporation has, at times, guaranteed loans or other financial obligations of AMREP Credit Corporation.

Request Number 46: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of AMREP Credit Corporation.

Request Number 47: For each calendar year since 19 7, AMREP Corporation has owned more than 75% of the outstanding voting securities of AMREP International, Ltd.

Request Number 48: A majority of the directors of AMREP International, Ltd. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 49: A majority of the officers AMREP International, Ltd. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 50: The President of AMREP International, Ltd. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 51: Officers or employees of AMREP International, Ltd. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of AMREP International, Ltd.

Request Number 52: AMREP Corporation consolidates operating results of AMREP International, Ltd. with its own and those of other subsidiaries in presenting financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 53: AMREP Corporation has, at times, guaranteed loans or other financial obligations of AMREP International, Ltd.

Request Number 54: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of AMREP International, Ltd.

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Request Number 655: For each calendar year since 19[illegible]8, AMREP Corporation has owned more than 75% of the outstanding voting securities of AMREP Printing Corp.

Request Number 656: A majority of the directors of AMREP Printing Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 657: A majority of the officers AMREP Printing Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 658: The President of AMREP Printing Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 659: Officers or employees of AMREP Printing Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of AMREP Printing Corp.

Request Number 660: AMREP Corporation consolidates operating results of AMREP Printing Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 661: AMREP Corporation has, at times, guaranteed loans or other financial obligations of AMREP Printing Corp.

Request Number 662: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of AMREP Printing Corp.

Request Number 671: For each calendar year since 1970, AMFEP Corporation has owned more than 75% of the outstanding voting securities of Intra-American Insurance Underwriters, Inc.

Request Number 672: A majority of the directors of Intra-American Insurance Underwriters, Inc. have also been, in the same year, officers or directors of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 673: A majority of the officers Intra-American Insurance Underwriters, Inc. have also been, in the same year, officers or directors of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 674: The President of Intra-American Insurance Underwriters, Inc. has also been, in the same year, an officer or director of AMFEP Corporation, for each year in which AMFEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 675: Officers or employees of Intra-American Insurance Underwriters, Inc. regularly report to directors, officers or employees of AMFEP Corporation with respect to the operation of Intra-American Insurance Underwriters, Inc.

Request Number 676: AMFEP Corporation consolidates operating results of Intra-American Insurance Underwriters, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 677: AMFEP Corporation has, at times, guaranteed loans or other financial obligations of Intra-American Insurance Underwriters, Inc.

Request Number 678: AMFEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Intra-American Insurance Underwriters, Inc.

Request Number 711: For each calendar year since 1971, AMREP Corporation has owned more than 75% of the outstanding voting securities of Wensley Associates, Inc.

Request Number 712: A majority of the directors of Wensley Associates, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 713: A majority of the officers Wensley Associates, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 714: The President of Wensley Associates, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 715: Officers or employees of Wensley Associates, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Wensley Associates, Inc.

Request Number 716: AMREP Corporation consolidates operating results of Wensley Associates, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 717: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Wensley Associates, Inc.

Request Number 718: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Wensley Associates, Inc.

Request Number 79: For each calendar year since the date of incorporation, AMREP Corporation has owned more than 75% of the outstanding voting securities of Rancho Lumber Co., Inc.

Request Number 80: A majority of the directors of Rancho Lumber Co., Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 81: A majority of the officers Rancho Lumber Co., Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 82: The President of Rancho Lumber Co., Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 83: Officers or employees of Rancho Lumber Co., Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Rancho Lumber Co., Inc.

Request Number 84: AMREP Corporation consolidates operating results of Rancho Lumber Co., Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 85: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Rancho Lumber Co., Inc.

Request Number 86: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Rancho Lumber Co., Inc.

Request Number 695: For each calendar year since 1970, AMREP Corporation has owned more than 50% of the outstanding voting securities of Sterling Title Company of New Mexico.

Request Number 696: A majority of the directors of Sterling Title Company of New Mexico have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 697: A majority of the officers of Sterling Title Company of New Mexico have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 698: The President of Sterling Title Company of New Mexico has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 699: Officers or employees of Sterling Title Company of New Mexico regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Sterling Title Company of New Mexico.

Request Number 700: AMREP Corporation consolidates operating results of Sterling Title Company of New Mexico with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 701: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Sterling Title Company of New Mexico.

Request Number 702: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Sterling Title Company of New Mexico.

Request Number 387: For each calendar year since 1956, AMREP Corporation has owned more than 75% of the outstanding voting securities of Sales Research Corp.

Request Number 388: A majority of the directors of Sales Research Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 389: A majority of the officers Sales Research Corp. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 390: The President of Sales Research Corp. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 391: Officers or employees of Sales Research Corp. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Sales Research Corp.

Request Number 392: AMREP Corporation consolidates operating results of Sales Research Corp. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 393: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Sales Research Corp.

Request Number 394: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Sales Research Corp.

Request Number 695: For each calendar year since 1970, AMREP Corporation has owned more than 50% of the outstanding voting securities of Sterling Title Company of New Mexico.

Request Number 696: A majority of the directors of Sterling Title Company of New Mexico have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 697: A majority of the officers of Sterling Title Company of New Mexico have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 698: The President of Sterling Title Company of New Mexico has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 50% of its outstanding voting securities.

Request Number 699: Officers or employees of Sterling Title Company of New Mexico regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Sterling Title Company of New Mexico.

Request Number 700: AMREP Corporation consolidates operating results of Sterling Title Company of New Mexico with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 701: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Sterling Title Company of New Mexico.

Request Number 702: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Sterling Title Company of New Mexico.

Request Number 711: For each calendar year since 1971, AMBEP Corporation has owned more than 75% of the outstanding voting securities of Wensley Associates, Inc.

Request Number 712: A majority of the directors of Wensley Associates, Inc. have also been, in the same year, officers or directors of AMBEP Corporation, for each year in which AMBEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 713: A majority of the officers Wensley Associates, Inc. have also been, in the same year, officers or directors of AMBEP Corporation, for each year in which AMBEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 714: The President of Wensley Associates, Inc. has also been, in the same year, an officer or director of AMBEP Corporation, for each year in which AMBEP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 715: Officers or employees of Wensley Associates, Inc. regularly report to directors, officers or employees of AMBEP Corporation with respect to the operation of Wensley Associates, Inc.

Request Number 716: AMBEP Corporation consolidates operating results of Wensley Associates, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 717: AMBEP Corporation has, at times, guaranteed loans or other financial obligations of Wensley Associates, Inc.

Request Number 718: AMBEP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Wensley Associates, Inc.

Request Number 719: For each calendar year since 1970, AMREP Corporation has owned more than 75% of the outstanding voting securities of Westside Shopping Plaza, Inc.

Request Number 720: A majority of the directors of Westside Shopping Plaza, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 721: A majority of the officers Westside Shopping Plaza, Inc. have also been, in the same year, officers or directors of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 722: The President of Westside Shopping Plaza, Inc. has also been, in the same year, an officer or director of AMREP Corporation, for each year in which AMREP Corporation has owned more than 75% of its outstanding voting securities.

Request Number 723: Officers or employees of Westside Shopping Plaza, Inc. regularly report to directors, officers or employees of AMREP Corporation with respect to the operation of Westside Shopping Plaza, Inc.

Request Number 724: AMREP Corporation consolidates operating results of Westside Shopping Plaza, Inc. with its own and those of other subsidiaries in preparing financial reports such as balance sheets, income statements and consolidated statements of changes in financial position.

Request Number 725: AMREP Corporation has, at times, guaranteed loans or other financial obligations of Westside Shopping Plaza, Inc.

Request Number 726: AMREP Corporation now maintains, and for some time past has maintained, control over the business operations and policies of Westside Shopping Plaza, Inc.

Request Number 737: The development and sale of homesites, homes and condominium apartments are highly competitive businesses.

Request Number 738: AMREP Corporation and its subsidiaries' subdivisions primarily compete with numerous developments in other portions of the country in climates attractive to retired persons and others who wish to escape the rigorous climates of the north.

Request Number 739: AMREP Corporation and its subsidiaries believe that the majority of sales at their subdivisions will continue to be made to persons living outside of the situs states.

Request Number 740: Condominium apartments sold by AMREP Corporation or its subsidiaries at Silver Springs Shores compete with numerous condominium developments in central and southern Florida.

Request Number 741: Condominium apartments sold by AMREP Corporation or its subsidiaries at Rio Rancho Estates compete with various condominium apartments in the greater Albuquerque area.

For purposes of the following Sixty-Four Requests for Admission the following definitions shall apply:

(1) Hook-up charges shall be defined as those charges paid to obtain utility service for a new residence which would not have to be paid to obtain service for a residence which previously had such service.

(2) Units shall include any numbered areas according to the numbering system usually used by AMREP Corporation and its subsidiaries to designate areas within a subdivision (i.e., such as Unit 1, Unit 2, Unit 3, etc. as used at Rio Rancho Estates) as well as named areas (such as Corrales Heights and Panorama Heights at Rio Rancho Estates).

(3) Water service means delivery of water from a well which serves several or many lots and is not solely owned and operated by the lot owners receiving the water.

(4) Sewer lines means hook-up to a central sewer disposal system and excludes installation of individual septic tanks or cesspools.

[The next Request for Admission appears at page 81.]

Request Number 727: AMREP Corporation has wholly-owned subsidiaries which maintain places of business in various states of the United States, including New Mexico, Florida, New Jersey and New York.

Request Number 728: The amount of gross sales made by AMREP Corporation and its subsidiairies, in the period 1962 to the present, is in excess of $250,000,000.

Request Number 729: AMREP Corporation and its subsidiaries have made substantial sales to purchasers in various states of the United States.

Request Number 730: AMREP Corporation or one or more of its subsidiaries have been, and are now, engaged in the practice of conducting tours for prospective purchasers or purchasers of land. Such tours include the transportation of prospective purchasers or purchasers from various states in the United States to subdivisions in Florida and New Mexico.

Request Number 731: AMREP Corporation or one or more of its subsidiaries were engaged in the practice of conducting tours for purchasers or prospective purchasers of land at Oakmont Shores. Such tours included the transportation of purchasers or prospective purchasers resident in various states of the United States to the subdivision in Missouri.

Request Number 732: Such tours, referred to in Request Number 730 above, and the sales of land, houses and condominiums made pursuant thereto, constitute a significant (i.e., in excess of 10%) amount of the business of Rio Rancho Estates, Inc.

Request Number 733: Such tours, referred to in Request Number 730 above, and the sales of land, houses and condominiums made pursuant thereto, constitute a significant (i.e., in excess of 10%) amount of the business of Silver Springs Shores, Inc.

Request Number 734: Such tours, referred to in Request Number 730 above, and the sales of land and houses made purusant thereto, constitute a significant (i.e., in excess of 10%) amount of the business of Eldorado at Santa Fe, Inc.

Request Number 735: Such tours, referred to in Request Number 731 above, and the sale of land made pursuant thereto, constituted a significant (i.e., in excess of 10%) amount of the business of Oakmont Shores, Inc.

Request Number 736: Respondent and its subsidiaries maintain, and at all times since 1962 have maintained, a substantial course of trade in undeveloped land and houses in or affecting commerce, as defined in the Federal Trade Commission Act.

Request Number 758: There are no hookup charges for electric service at Silver Springs Shores in any unit.

Request Number 759: There are hook-up charges for electric service at Silver Springs Shores in one or more units.

Request Number 760: There are hook-up charges for electric service at Silver Springs Shores in a majority of the units.

Request Number 761: There are hook-up charges for electric service at Silver Springs Shores in all units.

Request Number 762: There are no hookup charges for water service at Silver Springs Shores in any unit.

Request Number 763: There are hook-up charges for water service at Silver Springs Shores in one or more units.

Request Number 764: There are hook-up charges for water service at Silver Springs Shores in a majority of the units.

Request Number 765: There are hook-up charges for water service at Silver Springs Shores in all units.

Request Number 766: There are no hook-up charges for sewer lines at Silver Springs Shores in any unit.

Request Number 767: There are hook-up charges for sewer lines at Silver Springs Shores in one or more units.

Request Number 768: There are hook-up charges for sewer lines at Silver Springs Shores in a majority of the units.

Request Number 769: There are hook-up charges for sewer lines at Silver Springs Shores in all units.

Request Number 770: There are no hook-up charges for telephone service at Silver Springs Shores in any unit.

Request Number 771: There are hook-up charges for telephone service at Silver Springs Shores in one or more units.

Request Number 772: There are hook-up charges for telephone service at Silver Springs Shores in a majority of the units.

Request Number 773: There are hook-up charges for telephone service at Silver Springs Shores in all units.

Request Number 774: There are no hookup charges for electric service at Eldorado at Santa Fe in any unit.

Request Number 775: There are hook-up charges for electric service at Eldorado at Santa Fe in one or more units.

Request Number 776: There are hook-up charges for electric service at Eldorado at Santa Fe in a majority of the units.

Request Number 777: There are hook-up charges for electric service at Eldorado at Santa Fe in all units.

Request Number 778: There are no hookup charges for water service at Eldorado at Santa Fe in any unit.

Request Number 779: There are hook-up charges for water service at Eldorado at Santa Fe in one or more units.

Request Number 780: There are hook-up charges for water service at Eldorado at Santa Fe in a majority of the units.

Request Number 781: There are hook-up charges for water service at Eldorado at Santa Fe in all units.

Request Number 782: There are no hook-up charges for sewer lines at Eldorado at Santa Fe in any unit.

Request Number 783: There are hook-up charges for sewer lines at Eldorado at Santa Fe in one or more units.

Request Number 784: There are hook-up charges for sewer lines at Eldorado at Santa Fe in a majority of the units.

Request Number 785: There are hook-up charges for sewer lines at Eldorado at Santa Fe in all units.

Request Number 786: There are no hook-up charges for telephone service at Eldorado at Santa Fe in any unit.

Request Number 787: There are hook-up charges for telephone service at Eldorado at Santa Fe in one or more units.

Request Number 788: There are hook-up charges for telephone service at Eldorado at Santa Fe in a majority of the units.

Request Number 789: There are hook-up charges for telephone service at Eldorado at Santa Fe in all units.

Request Number 742: There are no hookup charges for electric service at Rio Rancho Estates in any unit.

Request Number 743: There are hook-up charges for electric service at Rio Rancho Estates in one or more units.

Request Number 744: There are hook-up charges for electric service at Rio Rancho Estates in a majority of the units.

Request Number 745: There are hook-up charges for electric service at Rio Rancho Estates in all units.

Request Number 746: There are no hookup charges for water service at Rio Rancho Estates in any unit.

Request Number 747: There are hook-up charges for water service at Rio Rancho Estates in one or more units.

Request Number 748: There are hook-up charges for water service at Rio Rancho Estates in a majority of the units.

Request Number 749: There are hook-up charges for water service at Rio Rancho Estates in all units.

Request Number 750: There are no hook-up charges for sewer lines at Rio Rancho Estates in any unit.

Request Number 751: There are hook-up charges for sewer lines at Rio Rancho Estates in one or more units.

Request Number 752: There are hook-up charges for sewer lines at Rio Rancho Estates in a majority of the units.

Request Number 753: There are hook-up charges for sewer lines at Rio Rancho Estates in all units.

Request Number 754: There are no hook-up charges for telephone service at Rio Rancho Estates in any unit.

Request Number 755: There are hook-up charges for telephone service at Rio Rancho Estates in one or more units.

Request Number 756: There are hook-up charges for telephone service at Rio Rancho Estates in a majority of the units.

Request Number 757: There are hook-up charges for telephone service at Rio Rancho Estates in all units.

Request Number 790: There were no hookup charges for electric service at Oakmont Shores in any unit.

Request Number 791: There were hook-up charges for electric service at Oakmont Shores in one or more units.

Request Number 792: There were hook-up charges for electric service at Oakmont Shores in a majority of the units.

Request Number 793: There were hook-up charges for electric service at Oakmont Shores in all units.

Request Number 794: There were no hookup charges for water service at Oakmont Shores in any unit.

Request Number 795: There were hook-up charges for water service at Oakmont Shores in one or more units.

Request Number 796: There were hook-up charges for water service at Oakmont Shores in a majority of the units.

Request Number 797: There were hook-up charges for water service at Oakmont Shores in all units.

Request Number 798: There were no hook-up charges for sewer lines at Oakmont Shores in any unit.

Request Number 799: There were hook-up charges for sewer lines at Oakmont Shores in one or more units.

Request Number 800: There were hook-up charges for sewer lines at Oakmont Shores in a majority of the units.

Request Number 801: There were hook-up charges for sewer lines at Oakmont Shores in all units.

Request Number 802: There were no hook-up charges for telephone service at Oakmont Shores in any unit.

Request Number 803: There were hook-up charges for telephone service at Oakmont Shores in one or more units.

Request Number 804: There were hook-up charges for telephone service at Oakmont Shores in a majority of the units.

Request Number 805: There were hook-up charges for telephone service at Oakmont Shores in all units.

Request Number 806: Since commencing sales at Rio Rancho Estates, there have always been lots available for purchase.

Request Number 807(a): Since commencing sales at Silver Springs Shores, there have always been lots available for purchase.

Request Number 807: Since commencing sales at Eldorado at Santa Fe, there have always been lots available for purchase.

Request Number 808: Since commencing sales at Oakmont Shores, and until AMREP Corporation or Oakmont Shores, Inc. ceased selling lots at Oakmont Shores, there were always lots available for purchase.

Request Number 809: Since commencing sales at Rio Rancho Estates, there always has been at least one year's supply of lots available for sale by AMREP Corporation or its subsidiaries, whether or not registered for sale with any government agency, taking into account all factors, including options on additional land contiguous to Rio Rancho Estates, land returned to the company by way of cancellation, and land added to inventory by way of exchanges of lots for smaller lots.

Request Number 810: Since commencing sales at Silver Springs Shores, there always has been at least one year's supply of lots available for sale by AMREP Corporation or its subsidiaries, whether or not registered with any government agency, taking into account all factors, including options on additional land contiguous to Silver Springs Shores, land returned to the company by way of cancellation, and land added to inventory by way of exchanges of lots for smaller lots.

Request Number 811: Since commencing sales at Eldorado at Santa Fe, there always has been at least one year's supply of lots available for sale by AMREP Corporation or its subsidiaries, whether or not registered with any government agency, taking into account all factors, including options on additional land contiguous to Eldorado at Santa Fe, land returned to the company by way of cancellation, and land added to inventory by way of exchanges of lots for smaller lots.

Request Number 812: Since commencing sales at Oakmont Shores, and until such time AMREP Corporation or its subsidiaries ceased making such sales, if ever, there has always been at least one year's supply of lots available for sale by AMREP Corporation or its subsidiaries, whether or not registered with any government agency, taking into account all factors, including options on additional land contiguous to Oakmont Shores, land returned to the company by way of cancellation, and land added to inventory by way of exchanges of lots for smaller lots.

Request Number 813: Under the terms of a contract to purchase land from AMREP Corporation or its subsidiaries, a purchaser who simply stops making payments loses all money paid to purchase such land, although AMREP Corporation has, at times, returned such money to certain purchasers, though not under a legal obligation to do so.

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Request Number 825: Tours are conducted of Silver Springs Shores for the purpose of allowing property owners or purchasers under contract to inspect their land.

Request Number 826: The extent of sales made on tours at Silver Springs Shores is substantial, i.e., to more than 10% of the couples on such tours.

Request Number 827: The extent of sales made on tours at Silver Springs Shores is very substantial, i.e., to more than 25% of the couples on such tours.

Request Number 828: The extent of gross sales made on tours at Silver Springs Shores is substantial in terms of total gross sales of Silver Springs Shores lots and homesites, i. e., more than 5% of said gross sales in each year since 1962 or such later year as the tours commenced, for years in which the tours were operated on a regular basis.

Request Number 829: Some purchasers, while on such tours at Silver Springs Shores, exchange their property for other property, exclusive of those who exchange into an immediate building area (as immediate building area is defined in Request Number 824).

Request Number 830: Tours are conducted of Eldorado at Santa Fe for the purpose of allowing property owners or purchasers under contract to inspect their land.

Request Number 831: The extent of sales made on tours at Eldorado at Santa Fe is substantial, i.e., to more than 10% of the couples on such tours.

Request Number 832: The extent of sales made on tour at Eldorado at Santa Fe is very substantial, i.e., to more than 25% of the couples on such tours.

Request Number 833: The extent of gross sales made on tours at Eldorado at Santa Fe is substantial in terms of total gross sales of Eldorado at Santa Fe lots and homesites, i.e., more than 5% of gross sales in each year since 1972 or such later year as the tours commenced, for years in which the tours were operated on a regular basis.

Request Number 834: Some purchasers, while on such tours at Eldorado at Santa Fe, exchange their property for other property, exclusive of those who exchange into an immediate building area (as immediate building area is defined in Request Number 824).

Request Number 814: In some instances, a purchaser stopping payments may lose more money than the actual damages to the company.

Request Number 815: The number of times a purchaser loses more money than the actual damages flowing from his repudiation of the contract is substantial, i.e., more than 10% of all cancellations.

Request Number 816: The number of times a purchaser loses more money than the actual damages flowing from his repudiation of the contract is very substantial, i.e., more than 25% of all cancellations.

Request Number 817: The number of times a purchaser loses more money because of his default than the actual damages flowing from the repudiation of the contract constitutes a majority of cancellations.

Request Number 818: Some purchasers purchase more than one lot from AMREP Corporation or its subsidiaries. The lots purchased may all be in the same unit of the subdivision, or in different units of the subdivision. In addition, some purchasers may own lots in more than one subdivision.

Request Number 819: Tours are conducted of Rio Rancho Estates for the purpose of allowing property owners or purchasers under contract to inspect their land.

Request Number 820: Some purchasers, while on tours organized to inspect property at the subdivisions, purchase additional land.

Request Number 821: The extent of sales made on tours at Rio Rancho Estates is substantial, i.e., to more than 10% of the couples on such tours. (For the purpose of this and other requests herein, the term "couple" shall be defined to include, in addition to husbands and wives, persons traveling together whether related or not.)

Request Number 822: The extent of sales made on tours at Rio Rancho Estates is very substantial, i.e., to more than 25% of the couples on such tours.

Request Number 823: The extent of gross sales made on tours at Rio Rancho Estates is substantial in terms of total gross sales of Rio Rancho Estates lots and homesites, i.e. more than 5% of said gross sales in each year since 1962 or such later year as the tours commenced, for years in which the tours were operated on a regular basis.

Request number 824: Some purchasers, while on tours at Rio Rancho Estates, exchange their property for other property, exclusive of those who exchange into an immediate building area. (An immediate building area is defined as an area in which construction of a home within the next ninety days is required.)

Request Number 835: Tours were conducted of Oakmont Shores for the purpose of allowing property owners or purchasers under contract to inspect their land.

Request Number 836: The extent of sales made on tours at Oakmont Shores was substantial, i.e., to more than 10% of the couples on such tours.

Request Number 837: The extent of sales made on tours at Oakmont Shores was very substantial, i.e., to more than 25% of the couples on such tours.

Request Number 838: The extent of gross sales made on tours at Oakmont Shores was substantial in terms of total gross sales of Oakmont Shores lots and homesites, i.e., more than 5% of said gross sales in each year since 1972 or such later year as the tours commenced, for years in which the tours were operated on a regular basis.

Request Number 839: Some purchasers, while on such tours at Oakmont Shores, exchanged their property for other property, exclusive of those who exchanged into an immediate building area (as defined in Request Number 824).

Request Number 840: For more than seven years AMREP Corporation or its subsidiaries have conducted dinner parties at which members of the public are shown a film describing a particular geographical area of the country or a subdivision.

Request Number 841: Members of the public attending such dinner parties are offered the opportunity by a speaker and a salesman (who might be identified as a land consultant, realtor, real estate salesman, representative or broker) to purchase land at a subdivision owned by AMREP Corporation or one of its subsidiaries.

Request Number 842: The films shown at such dinner parties are approved for such use by employees, officers or directors of AMREP Corporation.

Request Number 843: The speech by the speaker at the dinner parties generally follows a prepared script or text.

Request Number 844: The script or text of the speeches used by the speaker at dinner parties are prepared or approved by employees, officers or directors of AMREP Corporation.

Request Number 845: Promotional literature, contracts and property reports are shown to prospective purchasers at dinner parties.

Request Number 846: The promotional literature, contracts and property reports shown to prospective purchasers at dinner parties are prepared or approved by employees, officers or directors of AMREP Corporation.

Request Number 847: The dinner parties are conducted according to a planned format.

Request Number 848: The format for the dinner parties is prepared or approved by employees, officers or directors of AMREP Corporation.

Request Number 849: Revisions to the speeches, promotional literature, films and party format have been made.

Request Number 850: Such revisions to the speeches, promotional literature, films and party format have generally been made or appoved by employees, officers or directors of AMREP Corporation.

Request Number 851: Dinner parties are occasionally monitored by or at the direction of AMREP Corporation employees, officers or directors by means of personal observation.

Request Number 852: Dinner parties are occasionally monitored by or at the direction of AMREP Corporation employees, officers or directors by means of electronically recording the remarks of the speaker.

Request Number 853: The results of the personal observation at the dinner parties are generally reported to the appropriate personnel responsible for sales of AMREP Corporation, including, but not limited to, area directors, regional directors or the Vice-President for Sales.

Request Number 854: Electronic recordings of the presentation at the dinner parties are generally reviewed by the appropriate personnel responsible for sales of AMREP Corporation, including, but not limited to, area directors, regional directors or the Vice-President for Sales.

Request Number 855: Such electronic recordings are maintained and preserved by AMREP Corporation or its subsidiaries.

Request Number 856: Such electronic recordings were, in certain instances, reviewed by the Vice-President for Sales of AMREP Corporation.

Request Number 857: The sales results of dinner parties are generally reported to appropriate personnel such as area directors or regional directors. Ultimately, such results are reported to the Vice-president for Sales of AMREP Corporation.

Request Number 858: The operating officers responsible for sales of AMREP Corporation, often holding a title similar to "Vice-President, Sales," included at various times Howard Mandel, Peter Maknich, and Daniel Friedman.

Request Number 859: During the period of time before Howard Mandel was the operating officer responsible for sales, meetings were generally held between such officer and employees of AMREP Corporation at various places in the United States and/or in New York for the purpose of discussing sales techniques and results.

Request Number 860: During the period of time Howard Mandel was the operating officer responsible for sales, meetings were generally held between such officer and employees of AMREP Corporation in various places in the United States and/or in New York for the purpose of discussing sales techniques and results.

Request Number 861: During the period of time Peter Maknich was the operating officer responsible for sales, meetings were generally held between such officer and employees of AMREP Corporation in various places in the United States and/or in New York for the purpose of discussing sales techniques and results.

Request Number 862: During the period of time Daniel Friedman was the operating officer responsible for sales, meetings were generally held between such officer and employees of AMREP Corporation in various places in the United States and/or in New York for the purpose of discussing sales techniques and results.

Request Number 863: During the period of time after Daniel Friedman was the operating officer responsible for sales, meetings were generally held between such officer and employees of AMREP Corporation in various places in the United States and/or in New York for the purpose of discussing sales techniques and results.

Request Number 864: Other officers or directors of AMREP Corporation might and, occasionally, did attend the meetings referred to in Request for Admission Numbers 859 through 863.

[Request Number 864 is the last Request for Admission contained within this document.]

[This document continues on page 91.]

In accordance with Rule 3.31(b) of the Commission's Rules of Practice it is further requested that each denial of the above Requests, if any, specifically set forth the admission denied and, in detail, the reasons for such denial.

Complaint Counsel specifically reserve the right to submit such further Requests for Admission as we think advisable and appropriate, within the Rules of Practice, for the purpose of resolving issues of fact prior to trial and for such other purposes as may be permitted.

Respectfully submitted,

Perry W. Winston

Jon H. Calhoun

George E. Schulman

November 12, 1975

FEDERAL TRADE COMMISSION
RECEIVED
NOV 17 1975
SECRETARY

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation	DOCKET NO. 9018

To AMREP Corporation:

REPORT ON DEFICIENCIES IN
RESPONDENT'S SUBPOENA RETURN

This report is submitted pursuant to the order of Hon. Daniel H. Hanscom, Administrative Law Judge, following the prehearing conference of October 30, 1975. Complaint counsel have examined the weighty submission tendered by respondent in response to the subpoena duces tecum issued in June, 1975. While the volume cannot be disputed, the content shows an emphasis on superfluous papers and the omission of certain meaningful documents. The return will be analyzed below as to specifications for which a full return was not received.

SPECIFICATION ONE requested committee minutes and records, or the memoranda of any individual exercising the relevant responsibility, regarding the marketing policies of the corporation, the lot-price-determining mechanism, and the acquisition, development and sale of lots.

The only materials submitted pursuant to this Specification were those of the board of directors and executive committee of AMREP Corporation. They deal mainly with items such as stock options, loan guarantee resolutions and changes in the composition of the board. There is absolutely no discussion of the marketing policies that are the corporation's foundation other than general statements such as the following:

> "Mr. Friedman then reviewed the results of operations for the first quarter of the current fiscal year...." (Board Minutes of 9-29-70)
>
> "Messrs. Carity and Friend discussed the status of efforts to acquire additional large tracts of land for development." (Board Minutes of 9-29-70)

The price-determining mechanism is illuminated in similar fashion:

> "Following a brief discussion concerning the desirability of increasing prices charged for lots in the company's subdivisions...the meeting was adjourned." (Board Minutes of 5-22-70)

Acquisition, sale and development of the corporation's major subdivision was summarily treated by statements like:

> "Henry L. Hoffman then discussed Rio Rancho as a long range program for the corporation." (Board Minutes of 3-26-68)

This, then, along with some memos announcing the various price increases, is the substance of the return for this important specification. Page 301 of the "Office Procedures Manual" received under Specification Nineteen unequivocally states: "The dinner party is the center of our highly specialized selling system." Yet respondent would apparently have us believe that this "highly specialized selling system" is never discussed by committee or individual memo. No document received implements, explains or describes either the origination, development or operation of the policies and mechanism that have generated literally hundreds of millions of dollars in land sales. Did the dinner parties and home presentation programs operate for nearly a decade by word of mouth? This is preposterous.

The same is true for materials relating to price determination. We have received nothing more than the vague summations alluded to above and the after-the-fact lot pricing announcements--nothing regarding policy, rationale or purpose.

Respondent should search the files of AMREP Corporation's officers who had responsibility for the areas covered by this Specification and produce all relevant documents.

SPECIFICATION TWO requested information regarding complaints about, and resulting action taken against, the corporation's sales personnel. All sales offices were to be canvassed. Of the twenty remaining sales offices listed in the April 30, 1975 10-K Form, response was received from but three of these subsidiaries. What of the rest? A second and more urgent request should be made of these subsidiaries.

SPECIFICATION THREE was conditionally limited to the price lists and the "sales procedure manuals". These latter were not received unless the above-mentioned "Office Procedures Manual" is the intended document under a different name. In any event, the Office Procedures Manual--with its extensive discussion of how to rent office space, what data reporting forms to use, suggested menus

and duties of the office secretary--in no way satisfies the marketing procedures and policy documents requested in the original specification. This "manual" has not one line dealing with the sales methods and techniques to be utilized at the dinner parties. These dinner parties were carefully orchestrated functions employing sophisticated psychological sales methods. They did not occur spontaneously at each of the corporation's plethora of sales subsidiaries. They were designed, refined and taught by the corporation.

Most features of party procedures were common to all the offices (e.g., salesmen jumping up and shouting to place a "hold" on a specified parcel) and had to have been included in a standardized set of instructions. Accordingly, complaint counsel will require all sales procedure manuals and materials regardless of their technical name which set forth the dinner party sales procedures.

SPECIFICATION FOUR requested documents regarding past land acquisitions, options, and plans or negotiations towards potential acquisitions of land in New Mexico and Florida. No documents were submitted despite the obvious fact that such phenomena have occurred. One example was mentioned above in the quote from the 9-29-70 board minutes. There are certainly documents and writings concerning the corporation's post-1968 acquisition of 37,000 acres which were added to Rio Rancho.

Very reliable recent information references a 1973 application by the corporation to purchase 3,500 acres of state-owned land within the boundaries of Rio Rancho. This attempt apparently included an AMREP-financed appraisal of these lands. Yet not one document was provided. Further evidence of this attempt is found in an 8-13-73 memo from AMREP's General Counsel (included in the response to Specification fifteen) which summarizes the counsel's trip to Rio Rancho on August 6 through 9 of that year. The first item covered is a reference to problems arising in the purchase of the "Six State Sections". Clearly there are writings extant which should be produced under Specification Four.

SPECIFICATION SIX was withdrawn without prejudice pending examination of all materials received, especially those under Specification 12. The materials received are inadequate to provide the information requested by Specification 6. This Specification is reinstated by requesting the internal engineering studies mentioned under Paragraph G of the Notes to the Financial Statements attached to the corporation's Form 10-K for the fiscal year ended April 30, 1975.

SPECIFICATION EIGHT was withdrawn subject to receipt of a statement of admission by the corporation (reference the 7-21-75 Report

of Agreement) regarding any obligation to provide amenities. This statement has not been received to date. If respondent will provide it at the time set by the Law Judge for return of the materials herein described, this specification will be satisfied.

SPECIFICATION TEN requested documents which would reveal various "rates of building" and "projected capacities". No documents were received which were identified under this specification. The same holds true for SPECIFICATION ELEVEN, which requested underlying source materials. The documents must be produced.

SPECIFICATION TWELVE was only partially satisfied. No maps or documents were received with respect to the Eldorado and Oakmont Shores subdivisions. These should be produced. In addition, the maps provided for Rio Rancho and Silver Springs Shores lacked any identifying date. These dates, too, should be furnished.

Complaint Counsel are unable to say at this time that once the materials described in Specification Six above and in this Specification are produced these Specifications will be satisfied. Because of the highly technical nature of the covered materials, it will be possible to determine compliance only after depositions or informal talks with engineers or technicians employed by AMREP.

SPECIFICATION FOURTEEN requested the master plans and revisions for Rio Rancho and Silver Springs Shores. Although not identified as being in response to this specification, the Yguado "Comprehensive Plan" of 1963 and the Harman, O'Donnell & Henninger "Master Planning Study" of 1966, both for Rio Rancho, were included with documents from another specification. No similar plan for Silver Springs Shores, specifically the Abernathy plan, was received. It is not clear from this return whether the Rio Rancho plans are intended to represent a final plan or whether there are other plans or revisions. All such plans and revisions should be produced for both subdivisions.

SPECIFICATION SEVENTEEN requested all vacant land appraisals performed by or for the corporation. The only such document received is a late 1974 appraisal of lots in the corporation's Rio Rancho building areas. The appraisal mentioned in Specification Four above, regarding the 1973 State land undertaking, has not been produced. No appraisals were produced for Oakmont Shores or Silver Springs Shores. A range land appraisal was produced for land around Eldorado. None of the called-for commercial or industrial property appraisals were produced. This specification is incomplete until the above are provided.

SPECIFICATION NINETEEN requested all sales training aids employed by the corporation. The materials provided appear to be a "canned" salesman's training course more appropriate to a commercial salesman than to a direct-to-consumer one. It is replete with case studies involving how to sell an industrial product to a corporate purchasing officer, but almost nothing refers to AMREP's business: the conduct of a dinner party or the procedures to be followed in an in-home sales presentation. The only reference to the dinner party is a bare-bones one and a quarter page outline of the marketing concept. This was found in materials designated "Trainer's Manual".

These pages are attached to this report as Appendix I. They are devoid of substantive content but are appended here to highlight the fact that a "T.O." (take-over) system is used on consumers at the dinner parties. Yet no materials submitted cover this important sales technique, as requested with particularity in this specification.

One document page received under this response mentions a salesman's aid entitled the AMREP Presentation Book. This was not submitted. Other documents in complaint counsel's possession make it obvious that much more explicit manuals covering Party Selling Techniques and Procedures were used extensively. These manuals covered mandatory table seating configurations, qualifying questions to determine how much the prospect could afford, calling of "hold", overcoming objections, the "finishing touch", the "10 Commandments of Party Selling", etc. Respondent must produce these and all other realistic training aids and is in non-compliance until it does so.

SPECIFICATION TWENTY-ONE called for materials indicating the corporation's efforts to monitor its sales practices. Nothing was received in response. Information in complaint counsel's possession informs us that tape recordings were made of actual dinner parties and sales presentations. These tapes were made at the behest of, and for review by, senior marketing executives in New York for the purpose of appraising performance, modifying procedures, and suggesting training and operating revisions as well as policy supervision. These tapes were known to be retained and not destroyed. They obviously come within the ambit of this specification and must be produced.

SPECIFICATION TWENTY-TWO requested itemized selling expenses of an average single lot sale. Nothing was received in response. Respondent's counsel indicated that much of this information could be provided. Has it been overlooked and is it forthcoming?

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SPECIFICATION TWENTY-FIVE called for the most recent profile listing the current officers and directors. This has not been received and should be an easy matter to produce.

SPECIFICATION TWENTY-SEVEN requested specified films, slides and negative(s). The correct dinner party films were produced, but slides entirely different from those specified were substituted. These slides do not comply with the request and respondent is again requested to produce the designated slides. These slides were keyed to presentation scripts. In addition, no homesit films were provided and should be produced. The negative(s) requested in subpart (i) of this specification have likewise not been received.

SPECIFICATION THIRTY-ONE requested a copy of the Flatow, Moore, Bryan and Fairburn Rio Rancho study, together with amendments. Nothing was received in response to this specification.

AMREP Corporation is hereby requested to fully comply with this subpoena by providing the materials outlined above no later than November 28, 1975, as directed by the Law Judge in his October 31, 1975, pre-hearing order.

Respectfully submitted,

Perry W. Winston

Jon R. Calhoun

George E. Schulman,
Counsel Supporting Complaint

Dated: November 13, 1975

APPENDIX I (1)

MARKETING CONCEPT — DINNER RECEPTIONS

A. Invitations

1. Explain entire procedure of handling invitation from original mailing to R.S.V.P. return (show samples.)

B. Literature Packs

1. Show sample of lit pack and explain when it's mailed.

C. Admission Tickets

1. Show sample - when mailed - and function of ticket.

D. Confirmation Calls

1. Explain when call is made and purpose of same.

2. Present "confirmation call" and distribute script to trainees.

E. Company Policy

1. Punctuality at receptions.

2. Teamwork — room and equipment.

3. Personal grooming at reception.

4. Personal conduct at reception.

F. The "T. O."

1. What is "T. O."

2. Why "T. O." is used.

3. When "T. O." is used.

4. Who handles "T. O."

5. How "T. O." is handled. (Techniques)

MARKETING CONCEP - DINNER RECEPTIONS - (cont'd.)

G. Supplementary Reception Guests

1. Personal invitations.

2. Re-Invites (no-show).

3. H.S.O. referrals.

4. H.S.O. for credibility and additional purchase.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

United States of America,

v.

Amrep Corporation, Rio Rancho Estates, Inc., ATC Realty Corp., Howard W. Friedman, Chester Carity, Irving W. Blum, Henry L. Hoffman, Herman B. Oberman, Solomon H. Friend and Daniel Friedman,

Defendants.

75 Cr. 1023

Before:

HON. CHARLES M. METZNER

District Judge

New York, November 18, 1975
Room 506 - 10:30 a.m.

APPEARANCES

THOMAS J. CAHILL, Esq.,
United States Attorney for the
Southern District of New York,
By: PATRICIA HYNES, Esq., and RICHARD WILE, Esq.,
Assistant United States Attorneys

STANLEY S. ARKIN, Esq.,
Attorney for Defendants Howard Friedman and
Henry Hoffman

JACK S. HOFFINGER, Esq.,
Attorney for Defendant Irving W. Blum

PROSKAUER, ROSE, GOETZ & MENDELSOHN, Esqs.,
Attorneys for Defendants Amrep, Rio Rancho and ATC,
By: GEORGE G. GALLANTZ, Esq., of Counsel

APPEARANCES
(Continued)

ROBERT KASANOF, Esq.,
Attorney for Defendant Herman B. Oberman

WILLIAM R. GLENDON, Esq.,
Attorney for Defendant Solomon H. Friend

CURTIS MALLET-PREVOST COLT & MOSLE, Esqs.,
Attorneys for Defendants Chester Carity and Daniel Friedman,
By: JOHN SPRIZZO, Esq., of Counsel

- - -

(Case called.)

THE COURT: The reason I called you together wa to set up a schedule for any motions you had and to fix a trial date. What motions have to be made here, Mr.Gallantz?

MR. GALLANTZ: If your Honor please, I speak for the corporate defendants. We have not really determined what motions need to be made. We know that are to be several. We know that they will require a great deal of work, mainly because, if I understand it -- I'm new in the case myself -- the investigation -- the grand jury has been sitting on this case a long time and a great deal of

evidence has been taken. I understand that the documents number in the scores of thousands, and our application is for 90 days to make motions.

THE COURT: I can't do that.

MR. GALLANTZ: May I be heard on that?

THE COURT: Yes. I am going to try it in the middle of March, four months from now. That's a long time.

MR. GALLANTZ: Your Honor, I respectfully submit that it ought not to be tried that fast because of the amount of work that needs to be done in preparation for trial. We simply cannot plow through the evidence that we have. There can be no prejudice to the government if the case is tried at a slightly different schedule.

THE COURT: What do you consider a slightly different schedule?

MR. GALLANTZ: Our application is that the case be tried beginning in early October.

THE COURT: A year from now?

MR. GALLANTZ: Yes.

THE COURT: Absolutely not. The Court of Appeals won't let me do it.

MR. GALLANTZ: They will with the defendants' consent, as I understand it.

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THE COURT: No, no, not at all. A year to prepare for trial?

MR. GALLANTZ: We are assuming that your Honor would not want to try the case during the summer.

THE COURT: That's right.

MR. GALLANTZ: We are asking that it be tried shortly after the summer.

THE COURT: I need a justification for 90 days. 90 days to make motions?

MR. GALLANTZ: Yes.

THE COURT: Why?

MR. GALLANTZ: One is simply to understand the case, and that is just simply plowing through the massive material that hasbeen collected here, not only that has come before the grand jury but the massive material that we have been putting together. I respectfully submit to your Honor no matter how many people we put on the case, that plowing through, that digesting, that collecting could not be accomplished in much less than half the 90 days.

The other half of the 90 days is to do the legal thinking and to make the motions. We have one extremely serious problem here from the corporation point of view in that the counsel who advised us throughout the

entire investigation and was the conduit through which information was given to the grand jury certainly turned out to be a target of investigation and has now been indicted. We have serious severance questions here we would want to argue most forcefully to your Honor. We think the corporations are severely prejudiced to have this case tried together with their own counsel, who has been working with them right from the beginning.

I promise your Honor that we will not shirk the nights and the weekend work, yet we cannot get ready to make these motions in less than 90 days. A trial by March would be -- I mince no words -- in justice.

THE COURT: You have been aware of the investigation, you have been in the investigation and you still need four months to prepare a case for trial?

MR. GALLANTZ: Your Honor, these corporations are entitled to counsel andthey have asked me to appear for them. I have not been in the investigation. I would like to do the job for them that they deserve to have done. I do not understand how the government is prejudiced.

THE COURT: Judge Friendly has said society is prejudiced if you go beyond four months. He wrote that in the Rosner case. Youwant to go a year. It is impossible.

MR. GALLANTZ: This is not the routine case we are talking about. We have a lengthy indictment.

THE COURT: I know it is a lengthy indictment. I think it is too long. I don't think the government needs an indictment that long to achieve the ends they are seeking. We will come to that later in the discussions.

MR. GALLANTZ: Your Honor, we are begging for an opportunity properly to defend these clients and it seems to me that in the absence of an absolute constitutional prohibition against trying the case in the fall, that is when this case ought to be tried.

THE COURT: It is not a constitutional prohibition. It is the rules of the court and the Congress as reflected in the speedy trial bill. I don't see why anybody needs to put a trial off for a year in a criminal case. This is just a mail fraud case.

MR. GALLANTZ: It is just a mail fraud case, but I haven't heard anybody interested in this case who has estimated that the trial of this case will take less than three or four months and probably longer.

THE COURT: Miss Hines, how long will it take you to present your case?

MISS HINES: Your Honor, I think it will take six weeks to present our evidence. We may go a little

over that, but I think six weeks.

THE COURT: How about cutting your indictment down?

MISS HINES: Your Honor, I think that we can reach that if we have to. I think at this point of the proceeding the length of the indictment is only an aid to the defendants in terms of being very specific and in aiding them in preparing for a trial. There are several counts that could be handled in many different ways in terms of getting in proof of the mailing on the mail fraud counts. It need not be necessary to call every person who is named in the 80 counts. There are other ways of putting that evidence in very efficiently. However, in terms of --

THE COURT: How about cutting the thing in half to 40?

MISS HINES: In terms of counts, your Honor?

THE COURT: Yes, and not let the proof come in as similar acts either. I have been sustained by the Court of Appeals in cutting down 93 counts to 15 counts.

MISS HINES: In terms of mailing the one obvious way of dealing with it is that you have business records of a corporation that you can put in through --

THE COURT: I am talking about a jury understandi

90 counts.

MISS HINES: Well, a jury understanding 90 counts is understanding that there were 90 mailings and that a witness would come in with corporate records to say that these in fact were mailings that took place by the corporation.

THE COURT: I will repeat my question to you: How about cutting it down to 40? I'm only starting there. I may end up at a lower figure, but you have to convince me you need a 90-count indictment in order to obtain a conviction in this case.

MISS HINES: Well, your Honor, the question I think really is whether having that number of counts in the indictment is going to delay unnecessarily a trial of the case.

THE COURT: I think it is also a question of the administration of the case.

MISS HINES: Well, if you take a hypothetical that you could put one document witness on the stand --

THE COURT: You can take a hypothetical of 40 counts. How do you lose, how is the government prejudiced in proving its case against the defendants?

MISS HINES: In terms of a corporate defendant, your Honor, the only remedy at the end of a criminal trial

and a conviction is a fine.

THE COURT: I know that. That is not what we are talking about, are we?

MISS HINES: It is a consideration in terms of the government drafting indictments when there are in this instance three corporate defendants and if you have a conviction on 90 counts or it is actually 80 counts in this indictment, then the jurisdiction of the Court to impose a fine at the end of the case is on the 80 counts, not on 40 counts or 10 counts, and under the mail fraud statute the fine is $1,000, so I'm saying that that is a legitimate consideration for the government, particularly in a case of this size and magnitude. In terms of the number of counts in a case of this size --

THE COURT: I assume you are not trying a case to get fines against the corporations.

MISS HINES: It is a consideration. It is not the only consideration.

THE COURT: I would say it is a minor consideration.

MISS HINES: It is a consideration.

THE COURT: I said a minor consideration. I don't see why a Court should be held up for three months to collect $80,000 from three corporations. That can't

be the function of a federal court.

MISS HINES: Your Honor, I think that the legitimate inquiry in terms of administering the trial is whether those number of counts is going to delay a trial, and I think it is not, and also you are going to have a situation or you do have a situation where the indictment charges a scheme to defraud. In order to prove the scheme to defraud you are going to have to prove the pattern and practice.

THE COURT: You don't need 90 examples. 40 will do it for you.

MISS HINES: I am not saying that the government ask your Honor to put on all 80 of their counts in the indictment. That is my point. Yes, the government must prove that this is not an isolated instance and has to put on witnesses who will convince a jury that it is not an isolated instance. I am sure that the defendants will have their report on that arguemnt, but my point is that by cutting down the number of counts -- we are not saying by having an 80-count indictment that the government intends and indeed expects to call all 80 people who are named in the counts of the indictment.

So I think that at this point we really would have to wait to see.

My own expectation is that I would not call the 80 people that are the 80 counts in that indictment.

THE COURT: I don't know what I shouldn't do in this case what I did in the other case. You pick the 40 and let me know. If you don't pick them, I'll pick them. I'm not going to try the case in the size that you presented it to me.

MISS HINES: I'm simply tryingto argue to your Honor that the 80 counts really doesn't make a difference in terms of the size and length of the trial.

THE COURT: It makes a difference in terms of management of the trial, charging a jury and having a jury understand it.

You haven't answered my original question. Is it six weeks for the government's case?

MISS HINES: Yes, and at the outside 8 weeks.

THE COURT: 8 weeks?

MISS HINES: We believe we can present the evidence in six weeks, but I don't know how long it is going to take to pick a jury. There are other considerations. I'm talking about six weeks of government evidence. I think we can do it in that time. We would hope to do it in a shorter time. In terms of planning I think that six weeks is fair in terms of actual presentation of evidence.

I don't know how long it is going to take you to pick a jury.

THE COURT: That isn't what I asked you.

MISS HINES: I'm saying six weeks.

the court; I am asking you how long will it take the government to present its case.

MISS HINES: We believe six weeks.

THE COURT: That's the direct.

MISS HINES: Yes.

THE COURT: Then there is cross examination by six attorneys.

MISS HINES: I'm trying to take that into consideration, and that's why I say at the outset. I don't know how lengthy the cross examination would be, but at the outside I would still expect that the government's case will be completed, including the cross examination, at the outside in eight weeks.

THE COURT: Now you are giving me a different figure. I want to know how long it will take you to present your case.

MISS HINES: Not including cross examination?

THE COURT: Obviously, but you don't know anything about the extent of cross examination.

All youare qualified to tell me now is how long it will take to present your case.

MISS HINES: 4 to 6 weeks.

THE COURT: And that is the best you can give me, four to six weeks, after you have been before the grand jury for how long?

MISS HINES: Your Honor, the case has been before the grand jury for 20 months. We believe that it will take four to six weeks.

THE COURT: That is your best estimate? You can't give me a better estimate than that?

MISS HINES: No, that is the best estimate.

THE COURT: So that is about eight weeks for the government's case including the defendants taking the stand and presenting their own case. So we have here-- anybody know more about this case than Mr. Gallantz? He says he knows nothing about it.

MR. GALLANTZ: Those weren't qyite my words, your Honor.

THE COURT: Well, if you want four months to prepare a case and a year to try it, I have to try to proceed on the assumption you know nothing about it.

MR. ARKIN: If your Honor please, I have been with the case since its inception, some 20 or 21 months ago.

I'm Stanley Arkin. I represent Howard Friedman and Henry Hoffman, and I can say, based upon having dealt with this case on an intimate basis for that period of time, that the affirmative defense, that is our defense case, without allowing for cross examination by Miss Hines I have no reason to know how long she will cross examine particular witnesses or not. It will take a minimum of our weeks for us to put our case in.

THE COURT: When you say "us," you mean just for your defendants?

MR. ARKIN: No, I'm talking generally, universally.

THE COURT: Mr. Kasanof, do you agree with that?

MR. KASANOF: I think Mr. Arkin, as usual, is very careful and conservative, your Honor, since I'm on my feet I would like to say something with regard to joining with Mr. Gallantz in terms of time. The facts against my client, who is 75 years old, are 1961 and 1962 facts as to which I will be asked to prepare to make motions which are substantially serious. I think for the government -- the trial of the facts, in my belief, will be considerably shorter if it is deferred and then held to a very rigid schedule, because I think that if we are pressed on it the time gained forward may well be evaporated with

rummaging through an incredible amount of documents and stretching -- the indictment stretches well back into the late '50s, early '60s.

THE COURT: You mentioned an incredible amount of documents, Mr. Kasanof. Can you give me some idea of what you mean by "an incredible amount of documents"?

MR. KASANOF: I'm just a single practitioner and if they are that high they are incredible. But I understand they are literally described by Mr. Gallantz as being truckloads, file cabinets and file cabinets after file cabinets over a period of 20 months. I sort of came in in the middle of this about ten months back.

MR. ARKIN: I might be helpful in that respect, and I believe that Miss Hines would bear me out, by saying that probably somewhere between 10,000 and 15,000 documents went into the grand jury, and I consider, your Honor, that aside from those that went into the grand jury that we would expect to present in our case at least an equal number. There are literally truckloads. I have seen file cabinets and rooms full of documents, and also what are called microfish. How it is spelled, I don't know. That is microfilms of voluminous documents.

Just briefly, this involves Rio Rancho Estates, a subsidiary of AMREP, which has a large plot of land

near Alburquerque, NewMexico, and the indictment charges that the basic sales scheme in selling this land near Alburquerque, New Mexico was fraudulent in that it was sold on an investment basis and it was not a very good investment, and so on, and I will not burden your Honor with either the details of the indictment or the details of my reply or anybody else's reply to that. It is enough to say there are 44,000 customers, people who now own land in Rio Rancho Estates. The sales of land have been going on now since 1961 or 1962. We have had some 3,000 salesmen employed by the company in that period of time. We have had other employees who have dealt with customers who obviously would be pertinent witnesses to this case, not all of whom I expect would appear in court, certainly not, but certainly large numbers of people.

So that while it is a mail fraud case and the basic involvement in a mail fraud case might be simply stated, the case itself is not one which will not be so simply tried because there are so many witnesses and because, and I think I can say this with the backing of my brethern here, this is not going to be a case where we sit back and allow the government to put a case in and then see whether or not they have met their burden. It is going to be a substantial case here and virtually

every issue which is presented in the indictment, if it stays in the indictment after our motions, will be contested and contested not only as a matter of law but as a matter of fact. It is a very lengthy case and one which has innumerable witnesses.

I would say to your Honor that unless -- I don't know your Honor's calendar and I can only state it for myself and I believe for the others here that our respective calendars are such that if this case were set down with everybody's agreement in September or October, then we could go forward without the difficulty of the summer months intervening or, as I understand it, the commitments, prior commitments by other counsel here at the defense bar.

THE COURT: Unfortunately I again refer to Judge Friendly's specific wording in the Rosner case: Four months is too long to wait and it is proper to ask a defendant to get another attorney if his existing attorney cannot go to trial within four months of the date. That is written there and I know it because I was the Judge. I foolishly allowed five counsel to pick a trial date which was convenient to all five of them, which was five months later. Judge Friendly said that should not have been done and it is wrong to do it and the client must get new

counsel.

MR. ARKIN: I think the Rosner case was a little bit different than this case.

THE COURT: Not in the area in which we are now talking. I lived through it from beginning to end.

MR. ARKIN: I know you did, your Honor, but this is a case which will take somewhat longer to try.

THE COURT: My comment to you is on your state of your calendar being ready.

MR. ARKIN: I just put that out --

THE COURT: And any lawyer cannot get up in this court and say: I'm awfully sorry, Judge, but my calendar is such that I can't go to trial in four months.

MR. ARKIN: I will take that one back.

THE COURT: Good.

MR. KASANOF: Your Honor, let me --

THE COURT: He is in the middle of a sentence. Don't stop him.

MR. KASANOF: I'm sorry.

MR. ARKIN: I just take it back, period.

THE COURT: And you're stopping now.

MR. ARKIN: I will stop.

THE COURT: Let's hear from Mr. Glendon. He has been sitting here.

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MR. GLENDON: It will be a pleasure. I subscribe to the statements made by other counsel. I have been in the case a little longer than Mr. Gallantz. I represent the defendant Sol Friend. He is general counsel of this company. I should say, just in passing, that as Mr. Gallantz indicated to his and everybody else's astonishment he was told somewhere halfway down the stream, that he, who had been working as an intimate part of the defense team, was a target.

Mr. Friend came to this company in 1970 and has acted as general counsel. He also had the title of senior vice president. He is not a principal in the ownership of the company. He went before the grand jury and testified on some 10 occasions, your Honor. I mention this because I think it is pertinent, and not necessarily in Mr. Friend's behalf, but just to give you some feel for the complications of this case when one witness can be questioned at that length.

It is in our view an extremely complex situation. The motions that we intend to make I say, speaking in behalf of Mr. Friend, I think are certainly worthy of every bit of attention and effort that we can put into it and we feel, along with the other counsel, that really to do an effective job here we do need time. We will work

assiduously, I guarantee you on that. There will be no shirking on our part or anybody else's part, but we do feel it is a terribly significant case. It is to this man, tis lawyer, and it is to this company, which is a stock exchange company. It is to the people who live out there and are perfectly delighted, from what we hear, apparently, with Rio Rancho. They have bought and prospered under this regime that has been attackedand we feel that it cannot simply be treated as another case, and I know your Honor won't do that.

We do ask that we have enough time to do a good job, a proper job, and we think it is a proper request.

THE COURT: Mr. Sprizzo.

MR. SPRIZZO: Your Honor, I'm appearing in Mr. Fleming's place here. Mr. Fleming asked me to apologize to the Court. He couldn't be here because he had a personal problem to attend to.

We have just come into the case. We can't say we have had the benefit of 21 months participation in this particular matter.

So far I know very little about the case other than I read the indictment and I read a submission that Mr. Arkin prepared for the U.S. Attorney's Office.

Our feeling is that -- we understand the tremendous pressure that your Honor is under as a result of the type of pronouncements that your Honor has referred to in the Court of Appeals, but evry case is different and this case is a very, very complex case. It is one in which, in all fairness, the discovery process of going through documents may well consume three or four months. If this were a civil case -- I know it is not, but it has always struck me as somewhat odd that in a civil case nobody would even think of going to trial for three years, ina civil case of this magnitude.

In a criminal case, because of that type of pressure -- it was originally designed to protect the defendant. The theory of a prompt trial was to protect the defendant against protracted delays, but it has sort of gotten turned around a bit.

I think if your Honor is going to refer to appellate precedent in this particular matter I would look at the precedent in the matter in the Mitchell case where the indictment was filed in May and where Judge Gagliardi was pressing for a trial in September, which was basically some four months in a much less complex case but one of some importance and some magnitude. I think that although the Court did not issue the writ of mandamus, I think Judge

Friendly made it clear that it has got to be applied with a certain amount of flexibility.

I realize your Honor has tremendous pressure on his. I think your four month period seems unrealistic. If your Honor was going to start the trial, say, in six months, it might be a little different. But that might go into the summer. I don't think the trial they suggested is unrealistic interms of what my experience has been in cases of this kind, both when I was an Assistant and as defense counsel. I think in the Mitchell case there was a nine month or eight month period between the time the indictment was filed in May and the time the case came to trial, which was in February. I think in Judge Frankel's case, the voucher case, which was a fairly large fraud, the indictment was filed in February and the trial began the next January.

Your Honor, in terms of my experience in the way it actually works out -- I know how it sounds when you say ten months for trial, but the way it usually works, even where Judges fix earlier dates for trials, I think realistically when you are faced with discovery process and the review of 20,000 documents, even though we do have a large firm, and you get into the question of motions and answers to bills of particulars, realistically I don't think this case is going to go to trial by March.

In the Four Seasons case, another major trial we were in, Judge Griesa was using all types of informal discovery in order to get the case going. The indictment was filed in December and Judge Griesa was trying to get it to trial by May, which was five months, but it never quite worked out. The case wasn't actually tried for the better part of a year.

It makes a lot more sense to me, and it makes people able to plan their situations a lot better and I think it is better from the Court's point of view to set a realistic trial date, one where no one will be able to come back six months or five months later and say: We haven't got enough time and then keep pushing it back two months. It makes more sense to set a realistic trial date so that we all know what we are working towards and then not have any excuses when that trial date comes up.

THE COURT: All right. Mr. Hoffinger, you are the only lawyer who had not spoken.

MR. HOFFINGER: I think Mr. Sprizzo has stated our position quite well.

THE COURT: How long have you been in the case?

MR. HOFFINGER: I just got into it, your Honor. For my own limited perspective at this point I find it almost impossible for me to be able to prepare for this kind of

trial in March. Quite frankly, without minimizing any other lawyer's ability, I don't know how any could prepare to go to trial in this kind of case in March because there are so many other things that have to be done before that. Not only preparation. We have the whole motion process. We don't know precisely what it is that is going to be tried and if we are going to have to prepare for this particular trial, with all of those counts, all of those documents, I for one can not see any possible way in any sense that I could do my client justice by going to trial in March. I just can't. It would be an injusitce to my client and I just couldn't do it. I would have to do something else, try to withdraw from the case.

MR. GALLANTZ: Your Honor, I simply would like to give personal assurance myself and I believe of all these other words that we have no ulterior motive. We are not trying to protect some other case that we are going to try. We'll get ready for this case. We'll be ready for this case. We'll try it. There is no ulterior motive. We are simply trying to represent our clients and represent them properly.

It is an indictment against corporate defendants, a group of corporate defendants and affects our corporate life. It is a rather large corporation and the

results of anything less than a vigorous defense in this case are obvious. It is just going to kill the corporation. I have as much right to talk for my clients as people who represent individuals.

THE COURT: Did I give you the impression that you didn't have any right to talk for your clients? I just said to Miss Hines at the time that if the lawsuit merely was to collect $80,000 from the corporation by way of fines, it was an unfair use of the Southern District of New York.

MR. GALLANTZ: I'm not responding to that, your Honor. I am simply trying to establish a position to persuade your Honor that the application is made in good faith. We are not simply looking for delay. Delay serves us not at all, but quite injures us. We have put our heads together. We have come up with the best possible program for trying this case in the way that every client will be adequately defended, with the right to counsel being a real one and not with counsel scurrying around, not knowing what it is doing when he walks into the courtroom. That is the basis for the application. There are no ulterior motives. We are not trying to delude your Honor in any respect.

I think everyone has a reputation that is known

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to your Honor and all we are asking for is an orderly defense of this case.

MISS HINES: Your Honor, may the government be heard?

THE COURT: Yes.

MISS HINES: With respect to the time for motions, we are today three weeks away from the filing of the indictment, exactly three weeks away. If the defendants had an additional four weeks, that would be seven weeks in terms of motions.

In terms of time for trial, the government believes that if a trial began in mid March, April 1st or thereabouts that would give five months for the preparation for trial.

A lot has been said about the number of documents. There was a large number of documents produced before the grand jury. Some of them will be introduced at trial, but by no means all of that.

Mr. Arkin has been in this case for a considerable period of time, from the beginning, and has filed with the United States Attorney's office -- Mr. Sprizzo alluded to this -- a brief which shows that there has been a good deal of work already done on behalf of the corporation and the defendants in this case.

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This is not a terribly complex case. It is a mail fraud case. A fraud case perhaps takes more time to try, takes some time to prepare, but certainly five months is more than enough time to prepare to try this case, and 30 days from today's date is more than enough time to have motions in when we are two weeks away from the indictment, and the government would request a trial date some time in April, any time beginning April 1st.

THE COURT: Well, then you are going to run into the summer.

MISS HINES: I don't know what the Court's schedule is, but if we ran into part of July, I think that --

THE COURT: We would have a problem with the jury.

MISS HINES: Perhaps.

THE COURT: I'm not talking about my schedule, I'm talking about a jury schedule and getting jurors who have been told that this case can run three or four months. In honesty you'd have to tell it to them.

MISS HINES: I agree, your Honor.

THE COURT: You start by telling me you need four weeks and then you got up to eight weeks. Your estimation of time isn't too good as far as the Court is concerned. In fact, I get the idea you don't know how long

it is going to take you to put your case in when you start with four weeks and end up with eight weeks.

MISS HINES: When you first asked me the question I did interpret it as not including cross examination. When I gave you the six-week time I was taking into consideration cross examination by the defendants.

THE COURT: You should know by now that you have no idea what cross examination is going to take. All you are competent to tell me is how long it is going to take you to put your case in and you have no right to say that the six or seven defendants only need two weeks to cross examine my four weeks of testimony. That is ridiculous, isn't it?

MISS HINES: I don't mean to presume to be an expert in what the defendants are going to do in terms of cross examination. I did state to your Honor tha the government's case in all likelihood, the direct case of the government without cross examination,would be four weeks.

THE COURT: Four to six weeks.

MISS HINES: I'm getting to the six weeks part of it, your Honor. In terms of trying to plan a date for trial, if your Honor is concerned with avoiding going into the summer months in fairness I would have to say

six weeks. If you are going to take into consideration the possibility that the government's case might go over more than four weeks, I think we can do it easily in four weeks, but if your Honor is concerned about a timetable here, the government is also concerned that we are going to have adequate time in terms of planning to put our case on and also in terms of picking a jury.

I think that this case, the government's case, can be put in in four weeks. If you even double that to eight weeks, for the defendant's case, I think in three months this case can be adequately tried, and that would include picking a jury. So if we started April 1st we would be finished at the end of June. You might run over into the beginning of July, but I think you could pick a jury with the idea in mind of telling them that the case may go over into July and if that is a hardship they should advise us. IN all likelihood, your Honor, I think we can certainly pick a jury who could sit through part of July. Many people take their vacations in August. It is not that much of a difficulty, and as opposed to beginning the trial a year from now or close to a year from now, I think by far the balance is in favor of starting a trial in the spring.

THE COURT: You have now moved your figures up. I think you have moved themup in order to make it appear

that the trial can proceed and you want to start. They say you put in 10 to 15,000 documents before the grand jury.

MISS HINES: Your Honor, I haven't counted the documents. There were a lot of computer printouts which account for a great deal of the bulk and I don't want to start venturing guesses. I have no idea how many documents went before the grand jury.

MR. WILE: Your Honor, on all those documents the numbers are big, but I have come into this case really the same time as these other gentlemen have. I wasn't in the grand jury investigation. Most of these documents are nonsense. I would say that two or three percent of them have anything to do with the case.

THE COURT: Don't they have to read them and see whether they agree with you, see whether they are nonsense?

MR. WILE: That is a very brief process. That is what I am doing right now. It just doesn't take that long.

MR. ARKIN: Maybe I don't read as fast as my friend, but it does take a long period of time. It took us months and months just reviewing them for presentation to the grand jury. The second grand jury voted the bill.

The first grand jury after 15 months was not prepared to make a recommendation. This case was transferred out of one grand jury for the second grand jury.

MISS HINES: Before the record gets cluttered. It took the government almost a year to really get production of the documents through many motions in Part I and through a lot of delaying tactics, so the grand jury in fact went through several months of litigation to get these documents, motions by the government to hold the corporation in contempt, and so in terms of what was before the grand jury I don't think that that should be the controlling factor in the Court's determination of when to fix a trial date in this case. We are talking about a trial in the spring. Mr. Arkin has been on the case. He has obviously been reviewing these documents as they have been produced. In fact, one of the reasons why the corporation was giving the Part I judges the excuse that they could not produce the documents any faster was that the corporation itself was reviewing each and every document before it was produced before the grand jury, so there has been a review already of these documents.

Many of them, if not most will not be introduced at the trial. It was a grand jury investigation and when you get down to the actual indictment the

charges are pared down considerably and the issues considerably narrowed. You are not going to bring in every document that you had in front of the grand jury.

MR. SPRIZZO: On that question of Mr. Arkin's review, I don't see what that has to do with the rest of us. We are representing the two clients and they are entitled to our representation. We can't rely on what Mr. Arkin knows. We have to go through each and every document as though we came into the case de novo. There are only one or possibly two defense counsel here who have had a chance to see any of these documents. I don't think we should be charged with Mr. Arkin's knowledge.

MR. GALLANTZ: I understand a good deal of the corporate reviewing was done by a lawyer who has now been indicted.

THE COURT: I think the only thing that makes me accede to the October 1st date is the possibility, the strong possibility as I see it, of a jury not only being asked to sit for a minimum of three months and maybe four months, but taking it into the summer and the difficulty of getting a jury under those circumstances. It is going to be difficult enough to get a jury when you tell them they may be tied up for three or four months in a trial. That I think is going to be the only difficulty, really.

The rest are the usual problems that you have, the selection of a jury and the like aren't too difficult. But telling the jury they may be sitting through the whole month of July really makes this a terrible situation. If we had started in September I would have no problems for enforcing a trial.

I will take the October 1st date. Do you want to start in the middle of a week? You may be getting a jury panel going out at that time.

MR. GALLANTZ: I am looking at my little book which takes charge of my religious duties and tells me that I will not be able to work on Monday, October 4th.

THE COURT: Is that a one or a two-day holiday?

MR. GALLANTZ: It is a one-day holiday, your Honor. I would be ready to go to work at nightfall on October 4th.

THE COURT: Do you want to make it October 5th, then?

MR. GALLANTZ: Yes. Under the circumstances I would expect no opposition to 90 days to make motions.

THE COURT: That takes us, then --

MISS HINES: In deference to Mr. Gallantz, this is our position: I think 60 days for motions is more than adequate, even given an October date.

THE COURT: I have an idea that when the motions are made that is not going to be the end of pretrial discovery. I think February 2nd will be the date for all motions.

MR. GALLANTZ: Thank you. February 2nd and October 5th.

THE COURT: February 2nd is the return date of your motions. That means they have to be served ten days in advance.

MISS HINES: Your Honor, are you setting a date for the government's response?

THE COURT: The return date is February 2nd. That is the date of your response, ten days notice.

MISS HINES: If we have motions here by ten defendants that have been given close to three months for motions, the government is going to be hard pressed to answer all of those motions in ten days and we would request March 15th.

THE COURT: You are supposed to know the case.

MISS HINES: We do know the case, but I expect that the motions will be detailed and wrong and just the typing much less the response and presentation of legal arguments, if we oppose the motions, would take us --

THE COURT: You want seven weeks to answer.

You are only proving their motion, Miss Hines.

MISS HINES: Your Honor --

THE COURT: You need seven weeks to answer their motions. You are proving their case.

MR. GALLANTZ: That means February 2nd?

THE COURT: I am giving them until March 15th to reply.

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION
RECEIVED
DEC 4 - 1975
SECRETARY

In the Matter of

AMREP CORPORATION,
a corporation

DOCKET NO. 9018

RESCHEDULING OF PRETRIAL PROCEEDINGS AND POSTPONEMENT OF HEARING DATE

Under date of October 31, 1975, the Chief Administrative Law Judge, to whom this case was then assigned, issued an "Order On Results Of Prehearing Conference And Setting February 17, 1976, For Commencement Of The Case In Chief" in which all contemplated pretrial procedures and the hearing of the matter were scheduled. Since then, new counsel have entered the case for respondent and have requested a month to familiarize themselves with it. The request is not unreasonable for a matter of this magnitude and complexity. Accordingly, after consultation with counsel on both sides, the Administrative Law Judge now reorders the schedule as follows.

1. Respondent's counsel are granted until January 2, 1976, to familiarize themselves with this case, provided, however, that they utilize that time in part to prepare and file no later than December 19, 1975, a motion and supporting brief which they have indicated a desire to present concerning the proper relationship between this proceeding and a pending criminal prosecution in New York arising out of substantially the same facts. Complaint counsel will have two weeks thereafter to prepare and file an answering brief. The Administrative Law Judge will rule on said motion as soon as reasonably possible.

2. On or before January 9, 1976, respondent will produce for complaint counsel or explain, item by item, their failure to produce each and every document sought by one certain subpoena issued in June 1975, but not thus far produced, viz. the documents identified in complaint counsel's "Report On Deficiencies In Respondent's Subpoena Return" dated November 13, 1975.

3. On or before the same date (1/9/76) respondent will produce for complaint counsel or explain their failure to produce the records concerning assigned land purchase contracts called for by subpoena duces tecum of even date herewith.

4. On or before 1/16/76 respondent will serve on complaint counsel sworn, written answers or objections to any of those admissions requested by complaint counsel under date of 11/12/75, the truth of which respondent is not willing to admit.

5. The time within which complaint counsel may revise their application to depose respondent's officials is extended to 1/23/76. The Administrative Law Judge is presently uncertain about the extent to which such application should be granted, much depending on the extent to which needed evidence is forthcoming in the course of other pre-trial procedures.

6. Anticipating that at least some of the depositions requested by complaint counsel may be granted, both parties are requested to keep the period from 2/2/76 to 2/13/76 clear for the taking of such depositions and respondent's counsel is requested to advise all company officials listed on page 3 of complaint counsel's 11/28/75 application to hold themselves ready for possible deposition during that period.

7. On or before 2/27/76 complaint counsel will serve on respondent (1) its list of proposed exhibits, pre-numbered and identified (at least by parties, date and subject matter), with references to complaint paragraph(s) to indicate the primary (and secondary) relevance claimed for each document; simultaneously they should request an admission that each document is properly identified, as provided in Rule §3.31. On the same date it will serve (2) its list of witnesses, with name and address of each (and business affiliation where relevant), accompanied by a summary of the main points to be made by each witness at the hearing of this matter. A mere listing of subjects to be covered without indicating the general thrust of the testimony is not acceptable. In the case of expert witnesses, the summary must set forth each of the principal opinions to be uttered by such expert on the stand, together with the principal bases for each such opinion. Complaint counsel are urged to turnover as many exhibits and/or testimonial

summaries in advance of 2/27/76 as they can reasonably do without interrupting the pretrial schedule laid down here.

8. The hearing of testimony and other evidence will begin on 3/29/76 at a place to be designated early in 1976. Except for good cause shown, the party presenting its case will have a standing obligation to keep the Administrative Law Judge and opposing party advised of the names and sequence of witnesses to be called for at least three trial days ahead. The first such list will be served by complaint counsel no later than 3/24/76.

Paul R. Teeter
Administrative Law Judge

December 2, 1975

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SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

To AMREP Corporation
16 West 61st Street
New York, New York

You are hereby required to appear before that person authorized to administer oaths who may be designated by the undersigned ~~an~~ *Administrative Law Judge of the Federal Trade Commission, at* Federal Trade Commission offices, 1101 Pennsylvania Avenue, N.W., Room 7007 *in the City of* Washington, District of Columbia *on the* 9th *day of* January, *19*76, *at* 11:00 a. *m.*, *to testify at the instance of* the Federal Trade Commission in the matter of AMREP Corporation, Docket No. 9018

and you are hereby required to bring with you and produce at said time and place the following books, papers, and documents: or in lieu thereof, a computer tabulation that will disclose

1. the names, addresses and account numbers of all purchasers of land in AMREP Corporation's subdivisions (Rio Rancho Estates, Silver Springs Shores, Oakmont Shores, and Eldorado at Santa Fe) who sold or assigned their contracts to purchase land to a third party; and
2. the names, addresses and account numbers of the purchasers of each such contract;

during the period January 1, 1969, to date.

Fail not at your peril.

In testimony whereof, the undersigned, an Administrative Law Judge of the Federal Trade Commission, has hereunto set his hand and the said Federal Trade Commission has caused its seal to be affixed at Washington, D.C., this 2nd *day of* December, *19*75.

Paul R. Teetor, *Administrative Law Judge*

NOTICE TO WITNESS.—If claim is made for witness fee or mileage, this subpoena should accompany voucher.

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GEORGE H. SHAPIRO
GERALD SILBERT
WILLIAM H. HIGGINS, JR.
EDWARD SITTIG
PHILIP J. HIRSCH
JACOB INGERMAN
ROBERT WEITZ
GEORGE O. GALLANTZ
ROBERT J. LEVINSOHN
ANDREW D. LEVINSOHN
BERNARD GOLD
PETER G. SHAPIRO
KLAUS STEGER
HOWARD A. STAMPLEMAN
MARTIN J. GOLDSMITH
ALAN S. ROSENBERG
LARRY M. LAVINSKY
STEPHEN R. KAYE
STANLEY ROSENOFF
IRA H. LUSTGARTEN
MARVIN DICKEN
SAUL G. KRAMEN
ROBERT M. HAUPMAN
RONALD S. SCHACHT
MORTON M. MANGER
HAROLD ZIMMERMAN
DAVID I. GOLDBLATT
YALE H. GELLMAN
ARNOLD J. LEVINE
HOWARD N. LEIBOWITZ
BERNARD TANNENBAUM
HARVEY I. BENJAMIN
ALAN S. JAFFE
DAVID J. SOLON
STEVEN J. STEIN
MICHAEL A. CARDOZO
S. ROBERT BATTERMAN
HOWARD L. GANZ
PAUL N. EPSTEIN
LAWRENCE J. ROSENBERG
RONALD S. RAUCHBERG

WILLIAM R. ROSE
(1875-1931)

JOSEPH M. PROSKAUER
(1930-1971)

NORMAN S. GOETZ
(1923-1972)

CABLE: ROPUT
TELEX: ITT 421178
WU 123352

December 12, 1975

Hon. Paul R. Teetor
Administrative Law Judge
Federal Trade Commission
Washington, D.C. 20580

Re: Amrep Corporation, D.9018

Dear Judge Teetor:

I have carefully considered your letter of December 3, 1975 and the attached order rescheduling pre-trial proceedings and the hearing date. (Your letter arrived only yesterday due to an inaccurate address.)

I have regretfully concluded that the order absolutely forecloses the possibility that, as new counsel for respondent, we would have adequate time to prepare its defense. Under such circumstances it would be irresponsible for us to undertake to represent it.

This is a massive case in which millions or tens of millions of dollars and the continued solvency and existence of a major, publicly-held corporation are at stake. FTC complaint counsel have required three years of formal investigatory proceedings and post-complaint discovery procedures for their trial preparation. They have represented that they will need three months of hearings for the presentation of the case-in-chief alone.

The problems of preparation inherent in any such complex and protracted proceeding were immeasurably complicated by the recent indictment, on charges substantially the same as those involved herein, of the respondent corporation, certain of its subsidiaries and its principal officers including its Senior Vice President and General Counsel, who had been personally conducting the defense of this proceeding with the assistance of

other attorneys in respondent's Legal Department. After the indictment, we were asked to assume the responsibility for respondent's defense in this proceeding and the criminal case. I, accordingly, applied to you for a 30-day suspension of proceedings to permit us to familiarize ourselves with the case, and to appear and submit proposals as to the future course of pre-trial proceedings. I also informed you that an application would have to be made to deal with the obvious conflict between this and the equally massive criminal case, in which a trial date had been set for October 5, 1976.

While granting us the 30-day period requested, your order went on, nevertheless, to fix immediately an inordinately short, rigid schedule for pre-trial proceedings and trial which, I respectfully believe, is wholly inconsistent with the magnitude and complexity of the case and the added problem of substituting new counsel. Except for providing for their future consideration, the order ignores, moreover, the problems of conflict with the criminal case requiring us to proceed as though they did not exist and without regard to their immediate impact on the situation in view of the short deadlines imposed.

Thus, we are required to respond, on January 9, to numerous allegations of deficiencies in connection with production under a massive subpoena duces tecum previously issued and to a new documentary subpoena. The date set is only seven days after the expiration of the 30-day period, during which we presumably were to be permitted to analyze the enormous volume of documents aleady produced and obtain sufficient information to enable us to undertake the representation of respondent as well as to prepare a motion to deal with the problems raised by the criminal case.

Seven days thereafter, on January 16, the order would require us to answer Requests for Admissions containing 864 items and covering 90 pages - a clearly impossible task.

One week after that, on January 23, we are to receive and presumably begin to prepare necessary papers in opposition to application for depositions of 11 officers or employees of respondent, which are to begin, to the extent granted, nine days later on February 2, leaving little or no time for the preparation of the proposed witnesses.

Finally, on February 27, 1976 - or such earlier times as FTC complaint counsel may find it practicable - respondent is to receive its first and only discovery

concerning the complaint - a witness and exhibit list - and with such meager tools presumably turn to trial preparation. The schedule also precludes any possibility that respondent, like FTC complaint counsel, may require pre-trial discovery by way of admissions, depositions or subpoenas for its trial preparation.

In a case which the FTC has been preparing for three years, new counsel for respondent are then to have 30 days for trial preparation and thus to be "ready" to discharge their responsibilities during a 3-month presentation of the case-in-chief and to present respondent's case in defense. When you orally advised me of the proposed schedule, only a 23-day period was provided here. The only modification made in the final schedule in response to my objections to it was to lengthen this to 30 days. I cannot conclude that the difference is material.

At each and every stage the time allotted is wholly inadequate. As a whole, the prescribed schedule requires that we be prepared for trial after only about four months in a case which FTC counsel have required three years to prepare.

Any attempt to meet the schedule established would, moreover, preclude adequate preparation of the criminal case. The corporation and its officers as well as counsel would, during the entire time allowed for that preparation, be heavily occupied in attempting to meet impossible pre-trial deadlines in this proceeding and actually participate in months of hearings.

In addition, the schedule has been established before any consideration has been given to the problem posed to the corporation in obtaining information and testimony from officers under indictment at this time and others who may fear self-incrimination. We are ordered to obtain information for disclosure in pre-trial proceedings and to make disclosure beginning immediately before it has been determined whether we are able, or may properly be compelled, to do so at all. That determination is to be left for a later date.

In short, the order appears to sustain FTC's attempt to deal with the real problems posed by the simultaneous prosecution of this administrative proceeding and the criminal case by the simple expedient of forcing a trial here before the trial date set in the criminal case without regard to its

fairness. The schedule which results may accomplish that purpose, but no other. The proceedings would be so fundamentally unfair that we can not participate in them. The earliest practicable time for the trial of either of the two enormous cases now pending is the Fall of 1976. Obviously both cases cannot be tried contemporaneously and one must be deferred in any event.

We have accordingly advised respondent that we cannot act as counsel for it in this proceeding and that they should attempt to obtain other counsel, if any, who may be willing to represent it in the present circumstances.

Finally, your letter of December 3 and the attached order contains certain statements from which a person not party to our discussion might infer that the schedule therein had been established with my consent rather than over my strong objections. I am sure you will agree, as I advised you by telephone immediately upon receipt of your letter, that that would be completely contrary to fact.

Respectfully yours,

Morton M. Maneker

Morton M. Maneker

MMM/gs

cc: Perry W. Winston, Esq.
Federal Trade Commission
13209 Federal Building
11000 Wilshire Bouldevard
Los Angeles, California 90024

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

ADMINISTRATIVE LAW JUDGES

December 3, 1975

Perry W. Winston, Esq.
13209 Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024

Morton M. Maneker, Esq.
Proskauer, Rose, Goetz & Mendelsohn
200 Park Avenue
New York, New York 10022

Re: Amrep Corporation, D. 9018

Dear Messrs. Winston & Maneker:

Enclosed herewith is a courtesy copy of the revised schedule which we hammered out yesterday. It is in substantially the form discussed with each of you on the phone, with two exceptions. (1) Because Christmas may intervene, complaint counsel are given two weeks instead of ten days to answer the motion on the relation of this case to the criminal case pending in New York. (2) The period from the turnover of complaint counsel's evidence until the beginning of trial has been lengthened to just over one month to facilitate respondent's pretrial interviewing of important witnesses. As I told you both on the phone, in the absence of some Act of God I now view the new trial date (3/29/76) as solid. Thank you for your cooperation in rescheduling the matter.

Yours very truly,

Paul R. Teetor
Administrative Law Judge

Enclosure

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

MINISTRATIVE LAW JUDGES

December 11, 1975

Perry W. Winston, Esq.
13209 Federal Building
11000 Wilshire Boulevard
Los Angeles, California 90024

Morton M. Maneker, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Amrep Corporation, D. 9018

Gentlemen,

I was called this morning by Mr. Maneker, who, as a result of the misdirection of my letter to counsel of December 3, 1975, had just received my ruling rescheduling pretrial proceedings and setting the hearing of this matter down for March 29, 1976. He was concerned lest the language of my covering letter suggest consent to this schedule on his part. The language "hammered out" in that letter and "after consultation with counsel" in the order itself should not imply any more than that the final schedule was the product of efforts on my part to meet some of the strongest objections by both sides.

The statement that I considered the March 29, 1976, trial date "solid", except in the face of "Acts of God", could perhaps have been phrased better. My feeling then and now is that March 29, 1976, is a realistic trial date if all parties work to achieve it and that it would require some very strong reasons, not apparent to me now, to make me grant any further postponement. I never intended to suggest that Mr. Maneker agreed to do more than try, in good faith, to meet the schedule laid down in my order of December 3, 1975.

Insofar as that schedule may be affected by the pendency of the criminal case in New York, whatever arguments Mr. Maneker wants to make on that score will

presumably be made sometime this month and it seems premature to consider such problems until Mr. Maneker has filed his comprehensive motion and brief on this subject. Meanwhile I continue to expect both sides to make strong, good faith efforts to meet their respective deadlines.

Yours very truly,

Paul R. Teetor
Administrative Law Judge

Courtesy Copy

In the Matter of AMREP Corporation, a corporation.	DOCKET NO. 9018

STATEMENT OF COMPLAINT COUNSEL WITH REGARD TO THE WITHDRAWAL OF RESPONDENT'S COUNSEL

To: Hon. Paul R. Teetor,
Administrative Law Judge:

COME NOW Perry W. Winston, Jon R. Calhoun and George E Schulman, counsel supporting the complaint, and state their position with regard to the withdrawal from this case of Proskauer, Rose, Goetz & Mendelsohn, (Morton Maneker, case counsel), and the reported dismissal from the case by AMREP Corporation of its attorneys of record, Theodore R. Schreier and I. David Parkoff.

By letter of December 12, 1975, Morton Maneker informed Your Honor of the decision by his firm not to act as counsel for respondent in these proceedings. The principal reason underlying that decision is that the proposed trial schedule would not provide adequate time to prepare respondent's defense. He has cited and overstated the time elapsed since the inception of the investigation in this matter as compared with the allegedly insufficient four months provided to his firm before the trial date. As a second consideration, he has reiterated that there are "problems" imposed by the criminal trial, now firmly scheduled for October 5, 1975.

Mr. Maneker's objections are wholly speculative and lack any particularization of actual impediments to the preparation of a defense. Contrary to the assertions of Mr. Maneker, respondent is not in the position of commencing its defense as of December, 1975. The complaint was issued on March 17, 1975, more than nine full months ago. An answer was prepared, numerous pretrial conferences and discussions were conducted, and many motions were made and answered. Respondent has been fully and vigorously defending itself against the charges contained in the complaint, represented this entire time by counsel of record, Solomon H. Friend, Theodore R. Schreier, and I. David Parkoff.

The pre-trial conference on October 30, 1975, commenced with Mr. Schreier's account of the indictments handed down in the criminal case. With this knowledge, counsel for both sides (Mr. Schreier being assisted by AMREP attorney David Waldman), under the guidance of the of the Administrative Law Judge, fashioned a schedule for respondent's discovery and remaining other matters that would comfortably permit

the trial to commence on February 17, 1976. No discovery impediments or difficulties arising out of the criminal case were identified by respondent's counsel; in fact, expeditious trial was sought.

Mr. Maneker was retained thereafter, and apparently desires to start from the beginning. Mr. Maneker, or any other counsel retained to assist with the litigation procedure, should not be permitted to characterize himself as operating in a vacuum. He has untrammeled access to two full-time counsel of record who have complete knowledge of this case and the policies and procedures of the corporation. He does not have to "reinvent the wheel" in order to prepare respondent's defense.

Complaint counsel were orally informed yesterday that AMREP has "fired" Messrs. Schreier and Parkoff from participation in the defense of this case, though not from their positions with the corporation. The only plausible explanation for this maneuver is the most obvious one--AMREP is determined to delay and impede these proceedings by any conceivable means for as long as possible. By removing its house counsel, respondent attempts to self-fulfill its own claim of an inadequate defense posture. Legitimate concern for fairness to respondent should not be abused by base manipulations that mock the integrity of Federal Trade Commission proceedings.

Any concern for fairness to respondent with regard to the pending criminal matter must also take into account the fact that delay in this case has almost solely been occasioned by the inability of respondent to comply with deadlines established by the Administrative Law Judge. Any conflict in scheduling between the two trials comes as a direct result of its failure to answer complaint counsel's subpoena duces tecum within a reasonable time. Five extensions of time had to be given. Moreover, when the Proskauer firm was first asked to handle this matter (and it should be noted that it had been retained previously to represent the corporation in the criminal matter), Mr. Maneker sought and got more than one month merely to "familiarize" himself with the case. The trial date was postponed six weeks out of consideration for the corporation and Mr. Maneker's problems. We cannot let respondent seek and receive extensions for real or spurious reasons and then claim "unfairness" because the civil case and the criminal case will be avoidably conducted at the same time. The conflux of the cases is a problem brought down upon respondent by its own delaying actions.

Established law provides no legal reason why both cases may not proceed at the same time. While some facets of both cases are similar, the underlying allegations are different. If a respondent has conducted its affairs so as to allegedly violate both criminal and civil laws, it may not claim then that the government, acting on behalf of the people, must defer or drop one or the other prosecution. No such election of remedies is required.

Mr. Maneker raises the problem of his potential inability to secure testimony favorable to the respondent from the indicted officers and directors as well as from others. While we agree that his defense burden may be increased, it is a fundamental principle of our system of justice that no one may be compelled to testify against himself. Any defense lawyer faces this problem in any case he handles. The chance that a witness who is an employee of a corporation that has allegedly violated civil and criminal laws will "take the Fifth" is high, but the founding fathers, in drafting the Bill of Rights, decided that the public's right to know and the defendant's right to a fair trial must always be outweighed by an individual's right to refuse to testify against himself.

Going beyond the witness problem, Mr. Maneker claims an inability to prepare his defense adequately, but never spells out specific problems. For example, he hints at a burden created by a Request for Admissions that contains 866 separate requests. We agree that the document is long, but more than six hundred of those requests repeat eight to twelve identical questions for each of respondent's subsidiaries. This repetition is occasioned solely by respondent's twin decisions to do business through upwards of ninety wholly-owned subsidiary corporations and then to deny, in its Answer, that it has any control over the activities of those corporations. Mr. Maneker states that he needs time to prepare papers in opposition to our request for depositions of eleven unindicted company employees. It was our understanding that no such opposition was forthcoming, following discussion with Mr. Schreier.

Mr. Maneker's proposed opposition to perfectly legitimate discovery is but one more example of respondent's attempt to delay this case to the prejudice of the public. Further, document discovery by Mr. Maneker is immeasureably eased in this case by the fact that most of the exhibits to be introduced are corporate documents already well known to Mr. Waldman and other corporate officers, and largely supplied to complaint counsel by counsel for respondent.

Moreover, legitimate concern for fairness to respondent must be balanced with concern here for the other side. The real party in interest here is not complaint counsel, but, rather, the public. In vast numbers citizens continue to be subjected daily to entreaties to "invest" in respondent's land. They are joined by all those consumers presently under contracts of purchase whose individual monthly payments amount to an annual torrent--more than thirty-five million dollars were deposited in respondent's coffers in fiscal 1975. Many consumers are fearful of halting their payments because of the contract provision that provides for forfeiture of all monies paid should they discontinue their payments. Many other consumers have defaulted and look towards the Commission as their representative to secure just redress. These are the vital interests that must be balanced against the unsubstantiated protestations of respondent's counsel when any thought of further delay in this matter is entertained. Respondent is not talking of weeks or months, but an

delay until 1977--nearly two years after issuance of the complaint. Another year's delay will mean consumers will pour another thirty-five million dollars into respondent's pockets.

It is the responsibility to protect the public against unfair and deceptive acts or practices that requires us to say that one year after issuance of the complaint is time enough for respondent to appear in court and to defend itself against the charges in this case.

The only way that the integrity of the Federal Trade Commission can be upheld is if the trial in this case commences as expeditiously as possible. Accordingly, complaint counsel respectfully request that permission to withdraw as counsel for respondent be denied to Proskauer, Rose, Goetz & Mendelsohn, and to Theodore R. Schreier and I. David Parkoff. Complaint counsel consent to the removal of Solomon H. Friend as counsel for respondent so that he may concentrate his efforts in his defense of the criminal charges against him.

Respectfully submitted,

Perry W. Winston

Jon R. Calhoun

George E. Schulman
Counsel Supporting the Complaint

Dated: December 19, 1975

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

INISTRATIVE LAW JUDGES

December 19, 1975

Morton M. Maneker, Esq.
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Amrep Corporation, Docket No. 9018

Dear Mr. Maneker:

Your letter of December 12, 1975, was not received until the 17th, since when I have given thought to the reasons you report for advising Amrep Corporation that you cannot join its defense in the above matter.

The fundamental error in your letter, it seems to me, lies in your total disregard of the many months of preparation for trial which had gone into this case before you were involved. The case was brought on March 11, 1975, or more than a year before the presently scheduled trial date. Moreover, it is not true that your proposed client has had no discovery to date. Indeed, Amrep's counsel agreed at a prehearing conference on October 30, 1975, that the arrangements reached there would satisfactorily dispose of their earlier discovery motions.

The basic premise of my "Rescheduling" order of December 2, 1975, was that the pattern of dates for all remaining pretrial procedures and trial itself should remain in the relationship established on October 30, 1975, but be postponed about a month for your personal orientation to the case, as you requested. I have also told you on the phone that I would consider another month or so if you could make a showing of specific need but that I could hardly conceive of any reason for putting this case over until Fall or even later, as you now suggest.

Any lawyer can appreciate another lawyer's natural concern to familiarize himself with his case just as much as possible but there are obvious limits to the extent of permissible delay for any purpose. Here Amrep continues to be represented by other counsel who have worked hard on this case and who are quite familiar with it. While they would no doubt like to have you join the defense, it may be,

as you have apparently concluded, that that would not be compatible with the schedule which has been adopted here and which will be maintained intact to the best of my ability.

Yours very truly,

Paul R. Teetor
Administrative Law Judge

cc: Theodore R. Schreier, Esq.
I. David Parkoff, Esq.
David Waldman, Esq.
Amrep Corporation
16 West 61st Street
New York, New York 10023

Perry W. Winston, Esq.
Federal Trade Commission
13209 Federal Building
11000 Wilshire Boulevard
Los Angeles, Calif. 90024

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation	DOCKET NO. 9018

DENIAL OF STAY OF SCHEDULED DISCOVERY

Under date of December 19, 1975, as scheduled by the Administrative Law Judge in his order of December 2, 1975, respondent moved (1) to stay this proceeding pending termination of a trial scheduled for November 5, 1976, in U.S. v. Amrep Corporation, (S.D. N.Y., 75 Cr. 1023) or alternatively to certify said motion to the Commission, and (2) to stay immediately all discovery requirements imposed on respondent here (starting January 9, 1976) pending determination of the motion for a stay of the entire proceeding. The Administrative Law Judge is now considering the motion to stay the entire proceeding. Complaint counsel are scheduled, under the aforesaid order of December 2, 1975, to answer respondent's motion by the end of this week (January 2, 1976) and the Administrative Law Judge is committed by the same order to rule as promptly as possible thereafter.

Counsel appearing "specially" for respondent Amrep argues on one hand that the setting of this matter for trial on March 29, 1976 (by the same order of December 2, 1975) would leave him too pressed for adequate trial preparation but, on the other hand, that all further discovery should be postponed while the matter of a stay of proceedings is considered. These positions are inconsistent. In order to make the March 29 trial deadline, if this case proceeds as scheduled, a great deal of preparation is undoubtedly required. To halt trial preparation, even for a few days, as requested by respondent, could place the trial date in serious question.

The Administrative Law Judge anticipates that his ruling on a stay of the entire proceeding will be made before or at the most a few days after the scheduled resumption of discovery on January 9, 1976. In his

judgment it is more important to put those few days to work preparing for a precarious trial date in case a stay of the whole proceeding is not granted than to save a few days work if it is granted. Accordingly, a stay of the existing discovery schedule pending a ruling on a stay of this proceeding is DENIED.

Paul R. Teeter
Administrative Law Judge

December 29, 1975

BEST COPY AVAILABLE

Sent 12/29/75 11:57 AM

WU TELTEX WSH

C002(1151)

ROPUT NYK

TLTX 01 NYK PD 12/29/75

SECRETARY RRR

FEDERAL TRADE COMMISSION

PENNSYLVANIA AVE. AND 15TH STREET, N.W.

WASHINGTON, D.C.

RE: AMREP CORP., D. 9018

URGENT APPLICATION IS HEREBY MADE TO THE FEDERAL TRADE COMMISSION FOR A STAY OF DISCOVERY REQUIREMENTS IMPOSED ON RESPONDENT COMMENCING JANUARY 9, 1975, PENDING DETERMINATION OF A MOTION, FILED HEREIN ON DECEMBER 19, 1975, TO STAY THESE PROCEEDINGS UNTIL CONCLUSION OF THE TRIAL IN U.S. V. AMREP CORP., ET AL., 75 CR. 1023 (S.D.N.Y.).

THE GROUNDS FOR THIS APPLICATION AND THE PENDING MOTION ARE SET FORTH IN THE MEMORANDUM OF LAW ACCOMPANYING THE MOTION.

A SIMILAR APPLICATION WAS MADE TO THE ADMINISTRATIVE LAW JUDGE ON DECEMBER 19, 1975 AND DENIED BY HIM TODAY.

IN VIEW OF THE URGENCY OF THE MATTER, WE RESPECTFULLY REQUEST THAT THE COMMISSION ACT ON THIS APPLICATION ON OR BEFORE JANUARY 2, 1976. A COPY OF THIS APPLICATION IS BEING SENT TO FEDERAL TRADE COMMISSION COMPLAINT COUNSEL AND THE ADMINISTRATIVE LAW JUDGE.

PROSKAUER ROSE GOETZ & MENDELSOHN

ATTORNEYS FOR RESPONDENT

BY [illegible]

FOR PURPOSES OF THIS SERVICE ONLY

BEST COPY AVAILABLE

BEFORE JANUARY 2, 19[illegible]. A COPY OF THIS APPLICATION IS BEING SENT TO FEDERAL TRADE COMMISSION COMPLAINT COUNSEL AND THE ADMINISTRATIVE LAW JUDGE.

PROSKAUER ROSE GOETZ & MENDELSOHN
APPEARING SPECIALLY FOR AMREP CORP.
FOR PURPOSES OF THIS MOTION ONLY

BY: MORTON M. MANEKER

300 PARK AVENUE
NEW YORK, NEW YORK 10022
212-593-9426

CC: PERRY W. WINSTON, ESQ.
FEDERAL TRADE COMMISSION
LOS ANGELES REGIONAL OFFICE
ROOM 13209 WILSHIRE BOULEVARD
11000 WILSHIRE
CORRECTION
CC: PERRY W. WNINSTON, ESQ.
FEDERAL TRADE COMMISSION
LOS ANGELEX REGIONAL OFFICE
ROOM 13209
FEDERAL BLDG.
11000 WILSHIRE BOULEVARD
LOS ANGELES, CALIF. 90024

[illegible]. PAUL R. TEETOR
ADMINISTRATIVE LAW JUDGE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

[illegible]

[illegible]

Served
Filed 12/31/75 SDNY
Received
Entered in Docket
Entered in Diary For

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMREP CORPORATION,

Plaintiff,

-against-

FEDERAL TRADE COMMISSION,

Defendant.

---

75 Civ. 4013 (LWP)

NOTICE OF APPEAL

Notice is hereby given that plaintiff Amrep Corporation hereby appeals to the United States Court of Appeals for the Second Circuit from the orders dated November 3, 1975 and entered in this action on November 7, 1975, granting the motion of the defendant to dismiss the complaint and denying the motion of the plaintiff for a preliminary injunction on the ground that the action is moot.

Dated: New York, New York
December 30, 1975

PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, New York 10022

By Morton M. Maneker
Morton M. Maneker

Theodore R. Schreier
Theodore R. Schreier, Esq.
Amrep Corporation
16 W. 61st Street
New York, New York 10023

Attorneys for Plaintiff

To:

Paul J. Curran
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007

Taggart D. Adams
Assistant United States Attorney
One St. Andrews Plaza
New York, New York 10007

Secretary
Federal Trade Commission
Washington, D.C. 20580

Attorney General of the
United States
Washington, D.C. 20580

Barry Morris, Esq.
Office of the General Counsel
Federal Trade Commission
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Acting Chairman
M. Elizabeth Hanford
Stephen Nye

In the Matter of AMREP CORPORATION, a corporation.	ORDER DENYING APPLICATION FOR INTERLOCUTORY REVIEW DOCKET NO. 9018

This matter is before us upon respondent's request, set forth in a telegram to the Secretary dated December 30, 1975, for a stay of discovery requirements imposed on respondent (starting January 9, 1976), pending determination of a motion now before the administrative law judge to stay this proceeding until after completion of a trial scheduled to commence on November 5, 1976, in United States v. Amrep Corp. (S.D.N.Y., 75 Cr. 1023). The law judge denied a similar request for a stay of discovery on December 29, 1975.

The Commission has determined to treat respondent's request as an application for review of the law judge's decision denying its application for a stay of discovery. */ The application must be denied because it fails to satisfy the requirements of Section 3.23 of the Rules of Practice. Accordingly,

IT IS ORDERED that the aforesaid application for review be, and it hereby is, denied.

By the Commission.

Charles A. Tobin
Secretary

SEAL

ISSUED: January 2, 1976

*/ Treated as a motion, rather than as an application for review, respondent's request for a stay would not be properly before the Commission.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA :

- v - :

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORP., HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, and DANIEL FRIEDMAN, :

Defendants. :

- X

75 Cr. 1023 (CMM)

ORDER TO SHOW CAUSE

Upon the indictment herein and upon the affidavit of MORTON M. MANEKER, ESQ., sworn to January 2, 1976, and upon the exhibits appended thereto, and upon all the records and prior proceedings had herein, and good cause appearing therefor, it is hereby

ORDERED that the plaintiff appear before this Court on the 9 day of January, 1976 at 10 o'clock in the fore noon, or as soon thereafter as counsel can be heard, in Room No. 619 of the United States Courthouse, Foley Square, New York, New York to show cause why this Court should not, pursuant to Rule 2 of the Federal Rules of Criminal Procedure, enter an order enjoining all proceedings in the Matter of Amrep Corporation, presently pending before the Federal Trade Commission (Docket No. 9018), until the conclusion of the trial herein.

And it further appearing to the Court that immediate and irreparable injury, loss or damage will result to defendant Amrep Corporation before the hearing upon defendant's motion for a stay can be held, it is further

ORDERED that all discovery requirements imposed on defendant in the Matter of Amrep Corporation, Federal Trade Commission Docket No. 9018, which discovery now is scheduled to commence on January 9, 1976, be stayed pending determination of the instant motion; and it is further

ORDERED that service of this Order to Show Cause ~~and Temporary Restraining Order~~ and a copy of the papers upon which they are granted if made on or before 12 o'clock in the fore noon of January 6, 1976, ~~or, if properly mailed on or before o'clock in the noon of January , 1976~~, shall be deemed sufficient service thereof.

Dated: New York, New York
January 6, 1976

/s/ CHARLES M. METZNER
United States District Judge

Issued at 11:20 A.M.
Jan. 6, 1976 after hearing
counsel for Amrep
and the government.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

AMREP CORPORATION, : 75 Civ. 4013 (LWP)

Plaintiff, : ORDER TO SHOW CAUSE

vs. :

FEDERAL TRADE COMMISSION, :

Defendant. :

- -X

Upon the summons and complaint herein and upon the affidavit of MORTON M. MANEKER, ESQ., sworn to January 2, 1976, and upon the exhibits appended thereto, and upon all the records and prior proceedings had herein, and good cause appearing therefor, it is hereby

ORDERED that defendant appear before this Court on the day of January, 1976 at o'clock in the noon, or as soon thereafter as counsel can be heard, in Room No. of the United States Courthouse, Foley Square, New York, New York to show cause why this Court should not, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, (i) vacate its orders dated November 3, 1975, dismissing plaintiff's complaint in the action herein and denying plaintiff's motion for a preliminary injunction on the ground that the action is moot and (ii) enter an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, granting plaintiff a preliminary injunction against further prosecution of a proceeding pending before the Federal Trade Commission entitled In the Matter of Amrep Corporation (Docket No. 9018) until conclusion of the trial of a criminal case pending in this Court entitled United States of America v. Amrep Corporation, et al.

And it further appearing to the Court that immediate and irreparable injury, loss or damage will result to plaintiff before the hearing upon plaintiff's motion for a preliminary injunction can be held, it is further

ORDERED that all discovery requirements imposed on plaintiff in the Matter of Amrep Corporation, Federal Trade Commission Docket No. 9018, which discovery now is scheduled to commence on January 9, 1976, be stayed pending determination of the instant motion; and it is further

ORDERED that service of this Order to Show Cause and Temporary Restraining Order and a copy of the papers upon which they are granted if made on or before o'clock in the noon of January , 1976 or, if properly mailed on or before o'clock in the noon of January , 1976, shall be deemed sufficient service thereof.

Dated: New York, New York
January , 1976

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AMREP CORPORATION, : 75 Civ. 4013 (LWP)

Plaintiff, : AFFIDAVIT

vs. :

FEDERAL TRADE COMMISSION, :

Defendant. :

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MORTON M. MANEKER, being duly sworn, deposes and says:

1. I am a member of the firm of Proskauer Rose Goetz & Mendelsohn, attorneys for Amrep Corporation in the above-captioned action. I make this affidavit in support of Amrep's motion for (i) a preliminary injunction against further prosecution of a Federal Trade Commission proceeding entitled In the Matter of Amrep Corporation (Docket No. 9018) pending the outcome of a criminal trial on the same charges in this Court in the case entitled United States of America v. Amrep Corporation, et al. (75 Cr. 1023) and (ii) a temporary restraining order against discovery proceedings scheduled to commence on January 9, 1976 in the FTC proceeding pending the determination of this motion.

2. Amrep seeks to stay the FTC proceeding because (a) the FTC Administrative Law Judge has established a schedule for pre-trial discovery proceedings and trial which conflicts with the schedule for pre-trial proceedings

and trial established by Judge Metzner in the criminal case pending in this Court, thus rendering it impossible for Amrep to adequately prepare and present its defenses in both proceedings; (b) the indictment of Amrep's principal officers (all but one of whom have already pleaded their Fifth Amendment right against self-incrimination before the grand jury) will render it virtually impossible for Amrep to secure assistance and testimony from them necessary to respond to the FTC's discovery demands or to present an adequate defense at the FTC hearings until the criminal case has been tried; (c) the indictment of Amrep's general counsel, who had been in charge of the defense in the FTC proceedings, has left Amrep without representation before the FTC; (d) trial of the FTC proceeding in advance of the criminal case would require Amrep to provide the United States Attorney with a full "dress rehearsal" of Amrep's defense to the criminal charge. Moreover, it is clear that a stay of the FTC proceedings would not impair the public interest.

3. An Order to Show Cause with a temporary restraining order is necessary because the FTC Administrative Law Judge has refused to consider and decide these issues before imposing upon Amrep various discovery deadlines which are now imminent. Amrep is being required to proceed with these pre-trial discovery proceedings before it has been determined whether it may be fairly and reasonably compelled to proceed with the FTC proceeding at all, or on the conflicting schedule established. As a result of this decision to compel Amrep to proceed and later decide whether it was proper to do so, Amrep will, unless relief is

granted herein, be forced, on January 9, 1976, either to default on the first of these discovery deadlines or respond inadequately, as best it can, without the assistance of counsel, adequate time or the full assistance and testimony of its principal officers and at the risk of impairing its rights in the criminal case.

4. Amrep has applied to the FTC Administrative Law Judge for the relief sought herein, but its request for an immediate stay of all discovery had been denied and its request for a stay of all proceedings pending the outcome of the criminal trial has not yet been passed upon.

5. Amrep has also previously moved for a stay of the FTC proceedings "during the pendency of the criminal investigation" in a separate civil action in this Court entitled Amrep Corporation v. Federal Trade Commission (75 Civ. 4013). However, when the grand jury returned its indictment against Amrep, Judge Pierce denied that motion and dismissed the complaint on the ground "that the action is moot." Thus, a federal court has never passed on the merits of Amrep's application for a stay, and, as we show below, the indictment and the events which occurred subsequent to it demonstrate that the controversy is not moot. The conflict between the FTC proceedings and the criminal case in this Court is more acute than ever and threatens not only to render the administrative proceedings fundamentally unfair but also to invalidate the criminal proceeding.

6. In view of the fact that jurisdiction to grant the relief requested lies in both the pending civil and criminal cases of this Court, the instant application is framed

as both a motion in the civil case, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, for an order vacating Judge Pierce's prior order and granting a stay and as a motion, pursuant to Rule 2 of the Federal Rules of Criminal Procedure, for a stay of the FTC proceedings pending the outcome of the criminal trial. Accordingly, this affidavit, as well as the accompanying memorandum and exhibits, and an order to show cause, are being submitted simultaneously to Judge Pierce and Judge Metzner.

Prior Proceedings

7. I am informed that in early 1973 the FTC commenced an investigation of a great variety of Amrep's sales and development practices covering tens of thousands of sales over a period of years, and that this investigation continued for approximately two years before culminating in the issuance of a complaint on March 11, 1975. (A copy of the complaint is appended hereto as Exhibit A.)*

8. I am also informed that in March 1974 a federal grand jury sitting in the Southern District of New York commenced a second investigation into Amrep's activities, and that among the witnesses called to testify before the grand jury were seven of Amrep's principal officers or former officers who have since been indicted, and that six of these seven defendants invoked their Fifth Amendment right against self-incrimination before the grand jury.

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* Because of the bulk of the exhibits being presented herewith, these exhibits are being submitted to the Court in a separate binder.

9. I am further informed that, faced with the problem of responding to simultaneous discovery demands by the FTC and the grand jury, Amrep made a motion to the Commission on June 11, 1975 requesting that the grand jury proceeding be stayed pending the outcome of the FTC proceeding or, in the alternative, that the FTC subpoena then outstanding be quashed and the FTC proceeding stayed. By letter dated March 31, 1975, the Commission informed Amrep that the motion to quash was moot in view of the FTC complaint which just had been formally issued, that it lacked the power to stay the grand jury investigation, and that it refused to stay its own proceedings. (A copy of this letter is appended hereto as Exhibit B.)

10. I am further informed that, concerned with the prejudicial effect on the grand jury of publicity generated by the FTC complaint, Amrep moved on March 27, 1975 to stay the FTC proceedings pending the determination of the grand jury investigation and any indictments that might result from it. By decision dated June 27, 1975, the Administrative Law Judge ruled that Amrep was not entitled to a stay as a matter of law and certified to the Commission the question of whether the stay should be granted as a matter of administrative discretion or policy. (A copy of the decision is appended hereto as Exhibit C.) On July 29, 1975, the Commission issued an order denying Amrep's motion for the stay. (A copy of this order is appended hereto as Exhibit D.)

11. Amrep thereupon filed a complaint in this Court seeking a stay of the FTC proceedings "during the pendency of the criminal investigation." (A copy of the complaint is

appended hereto as Exhibit E.) By Notice of Motion dated August 29, 1975, the FTC moved to dismiss the complaint; Amrep then cross-moved for a preliminary injunction granting a stay of the FTC proceedings pending "the final determination of [the] criminal investigation."

12. These motions were still under consideration by Judge Pierce when the grand jury returned an indictment on October 28, 1975 against Amrep, two of its subsidiaries and seven of its principal officers and former officers, including its general counsel, Solomon H. Friend, who had been in charge of Amrep's defense in the FTC proceeding. (A copy of the indictment is appended hereto as Exhibit F.) By orders dated November 3, 1975, Judge Pierce then dismissed the complaint and denied Amrep's motion for a preliminary injunction on the ground that the filing of the indictment had rendered the action moot. (A copy of the Court's orders are appended hereto as Exhibit G.) On December 31, 1975, Amrep filed a Notice of Appeal from these orders.

13. On November 18, 1975 Judge Metzner established a schedule for motions and trial in the criminal case (see paragraph 17, infra). On December 2, 1975, with knowledge of the schedule in the criminal case, the Administrative Law Judge established his own schedule for pre-trial discovery and hearings in advance of the criminal trial, which would completely pre-empt the time required for preparation of the criminal case (see paragraph 18, infra). The Administrative Law Judge postponed for later consideration the question of whether the conflicts between the two proceedings requires deferral of the FTC proceedings. He thus ordered

Amrep to proceed and held that he would decide later whether it was able, or may properly be compelled, to do so.

14. Since it was apparent that these conflicting schedules established in the two cases would render it impossible to prepare and present adequate defenses in both proceedings, Amrep applied to the Administrative Law Judge, by motion dated December 19, 1975, for deferral of the FTC proceeding pending termination of the criminal trial, and for an immediate stay of all discovery in the FTC proceeding pending determination of Amrep's motion.

15. By decision dated December 29, 1975, the Administrative Law Judge denied Amrep's motion for an immediate stay of all discovery. (A copy of this decision is appended hereto as Exhibit H.) Amrep then applied to the Commission for such an interim stay pending consideration of its motion for deferral. (Amrep's telegram to the FTC, dated December 29, 1975, is appended hereto as Exhibit I.) To date, the Commission has not acted on this applicaion and the Administrative Law Judge has not acted on Amrep's motion for a stay of the FTC proceedings pending termination of the criminal trial. His order of December 29, 1975 states that he will do so either shortly before or shortly after the January 9 deadline.

The Conflict Between the FTC Proceeding and the Criminal Proceeding

16. On October 30, 1975, barely 48 hours after the indictment of the attorney who had been in charge of Amrep's defense in the FTC proceeding, the Administrative

Law Judge met with that attorney's assistants and with complaint counsel in order to set a discovery schedule and fix a trial date. Following the conference, the Administrative Law Judge issued an order, dated October 31, 1975, setting February 17, 1976 as the date for commencement of the FTC's case in chief. (Copies of the transcript of the conference and of the order are appended hereto as Exhibits J and K, respectively.)

17. At a pre-trial conference held on November 18, 1975, Judge Metzner ruled that, in view of the complexity of the case, the enormous quantity of documents involved, and the United States Attorney's estimate that the prosecution's case would take six weeks to present, the trial of the indictment would begin on October 5, 1976. The Judge further ruled that defendants' substantive motions and discovery and other pre-trial applications are to be made by January 23, 1976 and that the government must respond thereto by March 15, 1976. (A copy of the transcript of the pre-trial conference is appended hereto as Exhibit L.)

18. By order dated December 2, 1975, the Administrative Law Judge established a new schedule in the FTC proceeding for pre-trial discovery and hearings. (A copy of this order, which superseded the prior order dated October 31, 1975, is appended hereto as Exhibit M.) The December 2 order provided that by January 9, 1976 Amrep would be required to answer "item by item" a 12-page statement of alleged deficiences in its return to a massive documentary subpoena previously issued and respond to a new subpoena duces tecum. (Copies of the Report on Deficiencies

in Respondent's Subpoena Return and a subpoena duces tecum dated December 2, 1975 are appended hereto as Exhibit N.) By January 16, 1976, Amrep must answer or object to 90 pages of requests for admissions containing 864 separate items. (A copy of the Requests for Admissions is appended hereto as Exhibit O.) On January 23, 1976 Amrep will be served with complaint counsel's application for depositions of 11 of its officers and employees. To the extent the application is granted, the testimony of these officers is to be taken in three different cities during a 12-day period from February 2 to February 13. On February 27, 1976, Amrep is to receive the only discovery which it is accorded under the pre-trial schedule, a witness and exhibit list. No time for any further discovery by it is provided for. Thirty days thereafter, Amrep must be ready for trial, which is to begin March 29, 1976.

19. FTC counsel have estimated that it will then take three months for the presentation of their case in chief alone (see page 117 of transcript of prehearing conference of 10/30/75, a copy of which is appended hereto as Exhibit J). The hearings for the presentation of the case in chief are to take place in various cities around the country -- Albuquerque and Sante Fe, New Mexico (five weeks); Bronson, St. Louis, and Kansas City, Missouri; Ocala, Florida; and New York City (see page 177 of transcript, Exhibit J). They are not to be continuous and thus will take considerably more than three months. Respondent is then to have a six-week adjournment before presentation of its defense which, under the schedule established,

described above, thus cannot begin until some date in September. The criminal trial is to begin on October 5, 1976.

20. It is thus highly unlikely that the FTC proceedings can be completed before the commencement of the criminal trial, even under the highly compressed discovery and trial schedule established. But even if it is, the FTC discovery proceedings and months of actual hearings will completely occupy the entire time available for preparation of the criminal case. If Amrep were to attempt to comply with both schedules, it would clearly be deprived of adequate time to prepare in both cases.

The Indictment of Amrep's Principal Officers Prejudices Its Defense in the FTC Proceeding

21. In addition to the fact that the conflicting schedules in the FTC and criminal proceedings do not leave Amrep sufficient time to prepare adequately in either proceeding, the indictment of Amrep's principal officers renders it virtually impossible for Amrep to secure their assistance in trial preparation or their testimony in the FTC proceeding. The indictment and the FTC complaint essentially attack the same sales and development policies and practices of Amrep (a schedule comparing the major allegations in the indictment and the complaint is appended hereto as Exhibit P). The individual indictees have been Amrep's key executives during the entire period relevant to the FTC investigation (a chart identifying each individual indictee and the positions he has held at Amrep is appended hereto as

Exhibit Q). Six of the seven individual indictees have already invoked their Fifth Amendment right against self-incrimination before the grand jury. They must necessarily be heavily involved in their own trial preparation and concerned that information supplied by them to the corporation's attorneys for use in cross examination and defense of the FTC case will simply provide the criminal prosecutor with pre-trial discovery which he could not otherwise obtain.

22. Moreover, one of the indicted individuals, Amrep's general counsel Solomon H. Friend, was in charge of Amrep's defense in the FTC proceeding from the inception of the FTC investigation in early 1973 until his indictment two months ago. His necessary withdrawal therefore leaves Amrep without trial counsel before the FTC. As set forth more fully in my letter to the Administrative Law Judge dated December 12, 1975 (a copy of which, along with related correspondence, is appended hereto as Exhibit R), our law firm has concluded that it could not responsibly undertake to meet the prescribed trial schedule and be prepared for trial in the minimal time allowed in a case of this magnitude and complexity. (We undertook to represent Amrep only for the purpose of these applications for deferral of the FTC proceeding, in view of the imminence of the discovery deadlines imposed by the Administrative Law Judge.)

23. Even if Amrep were able to retain new counsel who believes that the FTC schedule could be met, and even if Amrep were able to prepare and present a defense in the FTC proceeding, a further unfairness arises from the fact that Amrep can only defend itself before the Commission by present-

ing all the defenses that it eventually will assert at the criminal trial, together with the evidence and testimony on which those defenses will be based. As a result, the United States Attorney will receive information concerning Amrep's defenses to the criminal charges that would otherwise be almost totally barred to it because of the narrow discovery permitted by the Federal Rules of Criminal Procedure. Furthermore, the United States Attorney will learn this information in the least equitable of situations since Amrep will continue to be bound to limited discovery of the Government's case by the same Federal Rules.

The Public Interest Will Not Be Harmed By a Stay of The FTC Proceeding

24. In view of the prior history of the FTC proceeding, as well as the availability of at least two forms of interim relief, it is clear that the public interest does not require a race to try the FTC complaint before the criminal case.

25. The FTC found no detriment to the public interest in a two year delay for formal investigatory proceedings before filing its complaint. The nine months since the institution of the proceeding in March, 1975 have been entirely occupied with additional discovery by the FTC. No discovery has yet been provided to respondent. Moreover, even it the FTC hearing were to proceed as scheduled, the projected duration of those hearings, together with the time consumed by appeals from an adverse ruling, would preclude a final determination until some time in 1977.

26. Despite this, although the FTC is empowered by Congress to seek injunctions both before and after issuance of a complaint (15 U.S. §53(b)), it deliberately decided not to seek such relief. If there were any urgency for immediate relief in the FTC proceeding, it obviously would have done so. Such a proceeding is a far more fair way to proceed than to attempt to prosecute both cases simultaneously and arbitrarily to attempt to compress the FTC proceeding into the time available before the criminal trial.

27. Moreover, in addition to the FTC's unused right to seek injunctive relief, there exist other governmental sanctions sufficient to protect the public interest during the pendency of the criminal trial. As a company engaged in the business of interstate land sales, Amrep is regulated by the Department of Housing and Urban Development (hereafter "HUD"), which has the power to enjoin Amrep from selling land if it finds that Amrep has failed to make full disclosure of facts bearing on such sales (15 U.S.C. §1706(c) and 24 C.F.R. 1710.45). Indeed, I am informed that in April 1975 HUD suspended sales by one of Amrep's subsidiaries for a period of two weeks pending the filing of an amendment to its Statement of Record disclosing the fact that the FTC had issued a complaint against Amrep.

28. Therefore, I respectfully request that Amrep's motion for a preliminary injunction against the prosecution of the FTC proceeding pending the conclusion of the criminal trial, and for an immediate stay of all discovery in the

FTC proceeding pending the determination of this motion, be granted in all respects.

Morton M. Maneker
MORTON M. MANEKER

Sworn to before me this
2d day of January, 1976.

Michael A Cardozo
Notary Public

MICHAEL A. CARDOZO
NOTARY PUBLIC, State of New York
No. 60-5607715 Qual. in Westchester Co.
Cert. Filed in New York County
Commission Expires March 30, 1976

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP Corporation, a corporation.	DOCKET NO. 9018

To: Honorable Paul R. Tector,
Administrative Law Judge

ANSWER TO RESPONDENT'S MOTION TO STAY

COME NOW Perry W. Winston, Jon R. Calhoun and George E. Schulman, counsel supporting the complaint, and, pursuant to Section 3.22(c) of the Commission's Rules of Practice, state their opposition to respondent's third motion to stay these proceedings, filed December 19, 1975.

STATEMENT OF FACTS

Following a two year investigation that had been impeded by respondent's unwillingness to comply with a subpoena duces tecum issued on May 31, 1974, the Federal Trade Commission unanimously voted on March 11, 1975 to issue its complaint and notice order against respondent. The complaint charged that respondent had engaged in unfair and deceptive acts and practices in the sale of vacant, undeveloped land in four subdivisions located in three states. Respondent was charged with, inter alia, misrepresenting the value of its land, misrepresenting that its land was a good investment, failing to disclose material facts affecting value and utility, affirmatively misrepresenting facts and engaging in other unfair and deceptive acts and practices. The notice order attached to the complaint suggests that if the facts are found as alleged in the complaint, the Commission may consider it appropriate to order respondent to cease and desist from certain practices and to make certain affirmative disclosures. Additionally, the Commission notified respondent that it may seek restitution to past, present and future customers as redress for them. Respondent filed an answer denying substantially all of the charges in the complaint.

Beginning in March, 1974, two consecutive grand juries empaneled in the Southern District of New York investigated respondent and certain of its officers with regard to sales to New York area consumers of vacant semi-arid grazing land at its Rio Rancho development.

On October 28, 1975, the second grand jury indicted respondent, two wholly-owned subsidiary corporations and seven present and former officers and directors for conspiracy to commit mail fraud and for violations of the Interstate Land Sales Full Disclosure Act. [United States v. AMREP Corp., et al., 75 Crim. 1023, S.D.N.Y.] All of the defendants have pleaded not guilty to the charges. Trial by jury is scheduled to commence October 5, 1976. Conviction carries with it the possibility of fine, imprisonment or both, in the sound judgement of the court.

Respondent previously moved, June 11, 1974, to stay either the grand jury proceedings or the Commission's investigation in order to resolve an alleged conflict between the two. The Commission dismissed this motion as moot following the issuance of its complaint on March 11, 1975. The Commission further indicated it had no power to stay the proceedings before the grand jury.

Claiming unreasonable burden, denial of constitutional rights, and violation of basic principles of common law, respondent again moved on May 27, 1975, to stay these proceedings pending a determination by the grand jury. On June 27, 1975, the Administrative Law Judge denied respondent's motion on the law and facts, and certified the policy questions raised by respondent's request to the Commission. On July 29, 1975, the Commission denied respondent's motion in all respects.

Thereafter, respondent sought an injunction against the Commission by initiating a similar proceeding in the Federal District Court for the Southern District of New York. On November 3, 1975, that court, taking into account the indictments which had been announced five days earlier, dismissed respondent's motion as moot in that respondent had sought a stay only during pendency of the grand jury proceedings, which had now terminated. Respondent now files this third motion to stay, pending completion of the criminal trial.

Despite these attempts to block the Commission's proceedings, preparation for trial has been progressing. On May 30, 1975, complaint counsel requested that the Administrative Law Judge issue a subpoena duces tecum for certain post-complaint discovery and for production of documents originally requested in an investigational subpoena but never produced. On June 13, 1975, respondent moved to quash claiming that the post-complaint subpoena was unduly broad, not proper discovery and burdensome to answer. Oral argument was requested and granted. The subpoena was issued on June 13, 1975, with a tentative return date of July 17, 1975, pending determination of respondent's motion.

On June 27, 1975, oral argument on respondent's motion was held but was generally inconclusive. Upon general agreement, Theodore Schreier and Solomon H. Friend, counsel for respondent, met with complaint

counsel in California on July 9, 1975, and resolved differences over 29 of the 32 specifications. Return was set for August 6, 1975. The three disputed specifications were submitted upon written argument to the Administrative Law Judge. On August 13, 1975, Judge Hanscom issued his ruling with regard to the disputed specifications. Complete return was then set for September 4, 1975, although respondent was urged to submit material as soon as possible.

Claiming the heavy burden of producing the required information, respondent secured another extension until September 17, 1975. Thereafter, respondent asked for and got extensions until October 9 and October 24, 1975. Accordingly, a subpoena duces tecum originally returnable on July 17, 1975, was delayed by respondent for over three months.

Even today important parts of the subpoena remain unsatisfied as outlined in complaint counsel's Report on Deficiencies dated November 13, 1975. That report identifies areas where the existence of documents is viewed as reasonably certain by complaint counsel, despite respondent's unexplained non-production. We seek by that report to secure either the documents or a statement from counsel that such documents do not exist. That report, unanswered to date, is now answerable on January 9, 1976.

Additionally, complaint counsel sought information regarding certain specifications by letter addressed to David Waldman, Esq., an attorney employed by respondent. The information sought includes explanations of coded references on computer printouts which were produced in response to the subpoena, as well as information about certain property reports. Two such letters, dated October 20, 1975, and October 30, 1975, remain unanswered to date. Accordingly, this part of the pretrial proceedings has not yet been completed.

Respondent moved for discovery of complaint counsel's case shortly after filing its answer, seeking extensive documents. By agreement with complaint counsel, embodied in a ruling by Administrative Law Judge Hanscom on July 15, 1975, respondent agreed to defer a ruling on its discovery requests pending discussions with complaint counsel to informally work out any differences. Such discussions proved fruitless, as respondent continued to insist on receiving complaint counsel's entire case-in-chief. Accordingly, on October 30, 1975, a pre-hearing conference was held to resolve all differences. Represented by Theodore Schreier, I. David Parkoff and David Waldman, respondent reached agreement with complaint counsel on the scope of respondent's discovery. Judge Hanscom, in an order dated October 31, 1975, set forth the agreed-to discovery: respondent will receive a witness list with a summary of expected testimony, an exhibit list with discussion of the issues expected to be covered by documentary evidence, and consumer correspondence and technical reports in complaint counsel's files favorable to respondent's position.

On November 12, 1975, complaint counsel applied for and subsequently secured a second subpoena duces tecum directed to respondent seeking one item of information; said subpoena remains unanswered to this date. Return on the subpoena is scheduled for January 9, 1976.

A request for admissions dated November 12, 1975, containing 865 requests was served on respondent in order to clarify the issues and to remove from trial those issues of fact that really need not be litigated extensively. The vast majority of said requests are a series of eight to twelve statements concerning respondent's control over each of some sixty of its ninety subsidiaries. As respondent has chosen to do business through upwards of ninety subsidiaries, but then denies that it controls any of them, such bulk is necessary.

Complaint counsel have also applied to depose eleven present and former employees of respondent. The employees chosen for deposition are not any of the officers or directors indicted in the criminal case. The names of these employees were selected with the assistance of respondent. Depositions are scheduled for the first two weeks in February, 1976.

At the October 30, 1975, pretrial conference Judge Hanscom secured the views of the parties on the trial date. Based upon the agreement reached there, the Judge set February 17, 1976, as the date for trial to commence. This date was agreed to by Theodore R. Schreier, respondent's counsel of record.

Two days prior to this conference, respondent's Senior Vice-President and General Counsel, Solomon Friend, was named in the indictment handed down by the grand jury. Mr. Friend was one of three attorneys who formally appeared for respondent in this proceeding. (David M. Waldman, a fourth attorney, has never filed a notice of appearance despite appearing for respondent in the pretrial conference held on October 30, 1975.) Respondent, seeking additional counsel to assist in its defense in this matter, then retained Proskauer, Rose, Goetz & Mendelsohn (Morton M. Maneker, of counsel). Mr. Maneker asked for and received a delay of all deadlines in this case for approximately one month in order to familiarize himself with the case. Despite the agreement in the pretrial by respondent's able counsel of record as to an expeditious trial date, Mr. Maneker, by his December 12, 1975, letter to Judge Teetor, and by this motion, seeks to put off this trial until the completion of the criminal trial, now scheduled to commence October 5, 1976. This would effectively delay this proceeding until 1977.

The Administrative Law Judge responded to the December 12, 1975 request by a letter dated December 19, 1975, in which he refused to alter the agreed-upon and already-delayed timetable. Mr. Maneker's response was to withdraw from the case. (Curiously, he had never filed a notice of appearance despite requests to do so.) He participates here by "special appearance" only for this motion to stay, a form of appearance not recognized by the Rules of Practice.

Accordingly, the facts as they currently stand may be summarized as follows:

1. One of the attorneys for respondent, Solomon H. Friend, was indicted by the Grand Jury and has withdrawn from these proceedings.

2. A final discovery and trial timetable was agreed upon by both sides, after the issuance of the indictments. No adjournment was requested at that time by counsel for respondent.

3. The firm of Proskauer, Rose, Goetz & Mendelsohn (Morton M. Maneker, of counsel), was retained by respondent to assist remaining counsel of record. [It is of interest to note that the same firm (George Gallantz, of counsel), had already been retained by the respondent to represent it in the criminal matter.]

4. A one month setback of all timetable dates was granted to Mr. Maneker to permit "familiarization" of new counsel with the case.

5. New dates were ordered:
(a) January 9, 1976, for final return of deficient items in the first subpoena return;
(b) January 9, 1976, for return of the second subpoena duces tecum;
(c) January 16, 1976, for response to the request for admissions;
(d) Early February, 1976, for depositions of eleven present and former unindicted employees of respondent;
(e) February 27, 1976, for complaint counsel's witness list and documents list;
(f) March 29, 1976, for commencement of trial.

6. Mr. Maneker, by letter to Judge Teetor, requested postponement of proceedings until after completion of the criminal trial, now scheduled to commence October 5, 1976. This request was denied by letter. Mr. Maneker, by letter, withdrew from the case, citing inability to prepare and defense conflicts with the criminal trial.

7. Mr. Maneker, by "special appearance" for this motion only, filed a motion to stay all proceedings until completion of the criminal trial.

8. Mr. Maneker, by telephone, requested that Judge Teetor temporarily stay general discovery proceedings pending determination of respondent's motion to stay; by order Judge Teetor denied the request. Mr. Maneker filed a motion by telegram requesting the Commission to stay discovery until resolution of the general motion to stay. (On December 31, 1975, complaint counsel mailed an answer to the request for a temporary stay, asking that the request be denied and the motion

referred to the Administrative Law Judge, as respondent had failed to comply with Section 3.23(b) of the Rules of Practice, which requires that the consent of the Judge be obtained before an interlocutory appeal may be taken.)

Respondent thus seeks to delay this proceeding by at least one more year in order to avoid the alleged conflict with the criminal trial and to provide time for the newest member of the defense team to prepare for the Commission proceedings. Counsel supporting the complaint oppose this unsupported and unjustified delay so that, one year after issuance of complaint, trial can commence. For the reasons set forth below, complaint counsel respectfully request that the motion to stay these proceedings be denied in its entirety.

If the respondent is requesting the Commission to exercise its discretion and stay these proceedings for reasons of policy, we submit that the Administrative Law Judge has no authority to grant such a request. The Commission has consistently held that determinations going to such public policy considerations are exclusively reserved to the Commission. First Buckingham Community, Inc., Docket No. 8750, May 20, 1963; Crush International Limited, Docket No. 8853, March 23, 1972; Suburban Propane Gas Corporation, Docket No. 8672, May 25, 1967; Drug Research Corporation, 63 F.T.C. 998, 1013(1963). Therefore, pursuant to Section 3.22(a) and 3.42(c)(9) of the Commission's Rules of Practice, it seems clear that the Administrative Law Judge must certify such discretionary questions to the Commission with his recommendations.

The issues of law presented by counsel including the alleged violations of due process by continuing this proceeding are properly addressed to the Administrative Law Judge in his adjudicative function in that such matters present issues of fact or law requiring his initial determination. See Drive-X Co., Inc., Docket No. 8615, June 10, 1964. This is in accordance with Section 3.22(a) of the Commission's Rules of Practice.

ISSUE I

WHETHER RESPONDENT IS ENTITLED TO A STAY OF COMMISSION PROCEEDINGS AS A MATTER OF LAW IN ORDER TO AVOID CONFLICT WITH SCHEDULED CRIMINAL PROCEEDINGS

Respondent claims that it is entitled, as a matter of law, to a stay of the Commission proceedings pending completion of the criminal trial now scheduled to commence October 5, 1976. The Commission proceedings are scheduled to commence on March 29, 1976, after completion by both parties of certain pretrial discovery. Respondent claims

same subject matter may violate its constitutional rights, impair its ability to defend itself, and is generally a violation of due process.

The law in this area is quite clear, as a result of recent court decisions clarifying some earlier conflicts. While the courts may, in their discretion, grant a stay of civil proceedings, they are reluctant to do so. The leading case in this area is United States v. Kordel, 397 U.S. 1 (1970). In affirming a district court denial of a stay of civil administrative proceedings, the Court set forth the areas of conflict between civil and criminal proceedings that might be such as to require a stay. They are: (1) lack of any corporate officer or agent to represent it because of the privilege against self-incrimination; (2) where the government brings the civil action solely to obtain evidence for its criminal prosecution; (3) where the defendant is unaware and unwarned of the possibility of criminal prosecution; (4) where defendant is without counsel; (5) where the defendant reasonably fears prejudice from adverse publicity; and (6) where the interests of justice require a stay. These areas of conflict as they relate to this case are discussed seriatim:

(1) A stay may be required where, because of the privilege against self-incrimination, no corporate agent or officer is available to either (a) respond to inquiries by the government in the civil matter or (b) to provide a proper defense in the civil matter.

(a) We are not faced with the situation where no one can answer inquiries for the corporation "...without subjecting himself to a 'real and appreciable' risk of self-incrimination." Kordel, supra, at 9. [Citations omitted]. There has been no showing by respondent that any indictee is the only source of information. In this case no indicted officer or director has been asked by the Federal Trade Commission to respond to anything. In fact, complaint counsel's requested subpoenas for depositions are directed to eleven current and former employees who have not been indicted.

Complaint counsel have submitted to respondent certain subpoenas and a first request for admissions. However, complaint counsel have never asked respondent to have its subpoena return authenticated or endorsed by any specified officer or director. Complaint counsel will continue to accept subpoena returns from counsel for respondent or any other person respondent chooses to represent it.

Neither do we face a situation where no one has the requisite knowledge save for those indicted. Complaint counsel's first request for admissions, despite its length, asks for the admission of simple facts that can be determined by any diligent perusal of corporate records. David M. Waldman may well be familiar enough with those records (he supervised the production of corporate records for both the grand jury proceedings and the Commission proceedings) to fully reply to the request.

In addition, William G. Baker, Jr., Jerome Belson and Mitchell S. Roberts are all directors of respondent who have not been indicted. Lawrence Perlmutter, Mitchell S. Roberts, Julius L. Ross, Sherman Lurie, Alfred F. Dellentash, Theodore R. Schreier and Victor Canizzaro are all officers of respondent who have not been indicted. Hundreds of other corporate employees are available to speak for respondent and to assist counsel with the case.

The Kordel test that respondent must meet in demonstrating that no authorized person is available to respond or assist has clearly not been met. See Kordel, supra, at 9. The court in United States v. Article of Drug, Etc., 43 F.R.D. 181, 187 (1967)*, stated that it would be constitutional ". . . to require the corporation to appoint an agent who could answer and sign the interrogatories without fear of self-incrimination." We have not yet reached that stage. Defense counsel have an entirely adequate number of responsible employees who may safely respond and assist.

(b) Respondent asserts that because "all of Amrep's key executives have been indicted and are awaiting trial in the criminal action . . . none of them will be able to testify at the FTC hearing unless they are granted immunity . . . ." As complaint counsel have not and do not seek their testimony, respondent must mean that it may call these executives as witnesses in its defense. Defense counsel's anticipation of their refusal to testify is certainly not a problem unique to this case--it confronts every defense lawyer in any criminal matter. An attorney must present the best defense he can with or without the assistance of individuals whom he would like to have testify; proceedings in the public interest against a corporate entity are not halted because of this obstacle.

Moreover, the officers cannot utilize their exercise of the privilege against self-incrimination elsewhere as a general excuse against appearing. There still exists the necessity in this matter to either again invoke the privilege in connection with precise questions or assume "the general duty to give what testimony one is capable of giving." See 8 Wigmore, Evidence, Sections 2192 and 2268 (McNaughton rev. 1961). The court in United States v. Simon, 373 F.2d 649 (2nd Cir. 1967), cert. granted sub. nom Simon v. Wharton, 386 U.S. 1030 (1967); vacated as moot, 389 U.S. 425 (1967), spoke directly to this point:

> "We cannot agree that 'civilized standards of procedure and evidence,' McNabb v. United States, 318 U.S. at 340, require that a witness under indictment be given the option

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* That case involved interrogatories propounded by the government in a civil action brought while a criminal investigation was being conducted into the same practices giving rise to the civil suit.

of non-appearance in any proceedings in related civil or criminal cases until his own trial is concluded." (At 653.)

Respondent may not claim the privilege on behalf of its executives or on behalf of anyone. As the Commission noted in Koscot Interplanetary, Inc., 82 F.T.C. 260 (1973):

> "The privilege against self-incrimination guaranteed by the Fifth Amendment is, of course, a personal privilege. It may not be asserted by a corporation, Wilson v. United States, 221 U.S. 361 (1911); by an individual as agent of a corporation, Hale v. Henkel, 201 U.S. 43 (1906); or on behalf of a corporation by an individual in his capacity as alter ego of the corporation, United States v. Guterma, 272 F.2d 344 (2nd Cir. 1959); United States v. Fago, 319 F.2d 791 (2nd Cir. 1963); United States v. Bell, 478 F.2d 40 (9th Cir. 1971)." (At 262, n. 3.)

Respondent cites United States v. Hasiwar, 299 F.Supp. 1053 (S.D.N.Y. 1969) as support for its position in this matter. A review of the facts of that case is appropriate to understand the ratio decidendi; the facts demonstrate that the case simply has no application here.

Hasiwar was arrested at a "narcotics bust" for assaulting a federal officer. Four others were arrested at the scene for violation of narcotics control laws. The only witnesses to the alleged offense were the federal agents and the four defendants in the narcotics case. Hasiwar's trial was scheduled first; while the four narcotics defendants had been arrested, they had not yet been indicted. These individuals indicated a willingness to testify in Hasiwar's defense regardless of the outcome of their own trial. They were, however, unwilling to testify to anything concerning the day of their mutual arrest prior to their own trial. Hasiwar applied for a stay of his trial until after the other trial. At argument, the government could advance no reason why Hasiwar's trial need proceed first. The court thought that the interests of justice could best be served by altering the order of the two trials; no public detriment would inure from trying Hasiwar last.

In the instant matter we have several important factors which distinguish this case from Hasiwar. The crimes alleged in Hasiwar were completed; here, both the grand jury and the Commission charged offenses which continue to this date. Public interest would accordingly suffer with a delay in either. In Hasiwar, the delay proposed by the defense was of very limited duration; here, respondent is asking for an open ended delay of one year or more. Justice and the public interest are not served by such delay. Most important, in Hasiwar, the only possible witnesses for defendant were those themselves facing criminal

charges and thus unwilling to testify. Here, as has been demonstrated, respondent has failed to show that the indictees are the only potential witnesses for its defense. Complaint counsel have demonstrated that other witnesses are readily available to respondent.

It is clear that respondent cannot secure a stay by arbitrarily announcing that its indicted officers and directors are its only witnesses and then claim protection of the rule in Basiwar. Likewise a corporation cannot appoint an individual to answer interrogatories who will claim the privilege against self-incrimination and then assert that no one is available to answer. The corporation's duty is to seek out and appoint an individual who may answer and assist. Kordel, supra, at 8. See also, United States v. 3968 Bottles, More or Less, Etc., 265 F.2d 332 (7th Cir. 1959); cert. denied, 360 U.S. 931.

(2) A stay may be required where the government brings the civil action solely to obtain evidence for its criminal prosecution.

There may well be a situation where the government brings a civil action solely to obtain evidence for its criminal prosecution. It is clear that in such a circumstance the Commission or a court may well feel that respondent was entitled, as a matter of right, to a stay of civil proceedings in order to protect an individual's right to remain silent. Kordel, at 11 to 12. Here, no claim is interposed that the government has acted in this fashion.

(3) A stay may be appropriate if the respondent was not advised of the possibility of criminal proceedings.

The derivation of this concern is that an individual not be compelled to give testimony in a civil matter not realizing that criminal prosecution is contemplated by the government. Respondent has long been aware of the possibility of criminal proceedings. Respondent's motion to quash an investigative subpoena, dated June 12, 1974, asserts positive knowledge of the grand jury proceeding. Accordingly, respondent cannot claim that it was not notified of the possibility of criminal proceedings.

(4) A stay may be appropriate where respondent is without counsel.

While this issue has not been raised in the motion to stay, it is raised by Mr. Mancker's letter of December 12, 1975 in which he stated that he could not participate in these proceedings under the schedule established by Judges Hanscom and Teetor.

Respondent has appeared in this proceeding by counsel virtually since the commencement of the investigation. Solomon H. Friend was the corporate spokesman throughout the investigation. Upon issuance of the complaint, Friend, Theodore R. Schreier and J. David Parkoff filed a notice of appearance with the Commission, and all appeared and participated in various proceedings. After Mr. Friend was indicted, he withdrew from active participation in the case, but Messrs. Schreier and Parkoff, joined by house counsel David Waldman, continued to represent respondent without objection. More recently, Proskauer, Rose, Goetz & Mendelsohn inserted themselves in these proceedings without filing the notice of appearance required by Section 4.1 of the Rules of Practice.

Shortly after Mr. Maneker's withdrawal by letter of December 12, 1975, complaint counsel were orally informed by Mr. Schreier that respondent had "fired" Messrs. Schreier and Parkoff from participation in the defense of this case, though not from their positions with the corporation. The only plausible explanation for this maneuver is the most obvious one--respondent is determined to delay and impede these proceedings by any conceivable means for as long as possible. By removing its house counsel, respondent attempts to self-fulfill its own claim of an inadequate defense posture. Legitimate concern for fairness to respondent should not be abused by base manipulations that mock the integrity of Federal Trade Commission proceedings.

Accordingly, respondent cannot claim that it has not been represented by counsel, and thus cannot claim that a stay might be appropriate under those grounds.

(5) A stay or other appropriate action might be required if the defendant in the criminal matter reasonably fears prejudice from adverse publicity.

This contention was litigated and denied in the previous motion to stay and is not in issue here.

(6) A stay may be appropriate in the interests of justice.

The Supreme Court states that the interests of justice might sometimes require a stay of proceedings. In Kordel, supra, at 12, n. 27. the Court cites instances where a stay was granted at the request of the government (certainly not the case here) and two instances where a stay was granted at the request of the defense. Neither of the latter involved a corporate defendant and stays were based upon the Fifth Amendment problems of individuals confronted with civil and criminal prosecutions arising out of the same single transactions.

Respondent asserts that the test to be applied in determining whether a stay should issue is a three-pronged one: "(1) the conflicts between the civil and criminal proceedings and the impairment of defendant's rights are immediate, rather than hypothetical or potential, [citations omitted]; (2) the civil and criminal proceedings arise out of the same activities of the defendant, [citations omitted]; and (3) other methods of protecting defendant's rights are unavailable or inadequate [citations omitted.]" Motion to Stay, at 23 to 24. While complaint counsel rely upon the Supreme Court's analysis in Kordel, supra, respondent's position is reviewed here.

(1) "The conflicts between the civil and criminal proceedings are the impairment of defendant's rights are immediate, rather than hypothetical or potential."

The conflict between the civil and criminal cases are now immediate in the sense that the grand jury has now indicted respondent and others. Respondent cites Texaco, Inc. v. Borda, 383 F.2d 607 (3rd Cir. 1967), as support for staying the civil proceeding when the conflict "matures." However, complaint counsel do not agree that there is any immediate impairment of defendant's rights. The quotation cited is three-fourths complete. The court's complete rationale in ordering a stay was: "It may well be that the trial of the criminal case will reduce the scope of discovery in the civil action. And perhaps it might simplify the issues." At 609. (Moreover, Texaco involved a stay sought by the plaintiff.) Civil discovery in this matter is nearly complete--the criminal trial will not affect its scope. Likewise, the issues here would be unaffected.

Respondent claims that by proceeding first in the civil case, it will have to "tip its hand" and disclose vital information with regard to its defense posture. Motion to Stay, at 31 et seq. Respondent cites United States v. Simon, supra, but fails to understand the decision of the Second Circuit. Defendants in Simon, all individuals, were charged with conspiracy to commit mail fraud and criminal securities law violations, while at the same time they were involved in a civil case involving a reorganization under the Bankruptcy Act. Both actions arose out of their employment as accountants for the insolvent corporation. The trustee in bankruptcy applied to take the depositions of defendants prior to the trial of the criminal charges. Defendants sought a stay in order to avoid giving potentially incriminating evidence in the depositions; they felt that they could not assert the privilege against self-incrimination without losing their professional standing.

The district court judge agreed, and stayed the trustee, but the Second Circuit held that the possible disclosure in advance of material important to their defenses was not occasioned by "discovery which the government has initiated or promoted for the purpose of circumventing the Federal Rules of Criminal Procedure or any constitutional right of the appellees." Simon, at 652.

Accordingly, the court held that the defendants could either assert the privilege against self-incrimination or testify. No impairment of their constitutional rights was found. In the Commission's case, corporate respondent has no such privilege, nor is there any improper motive for proceeding with the civil hearing in advance of the criminal trial.

(2) "The civil and criminal proceedings arise out of the same activities of the defendant."

Respondent asserts that a stay herein is required because of the similarity or identity of the cases. In advancing this proposition respondent cites authority which is no longer followed and fails to discern the thrust of the cases. The courts generally will not grant a stay even where the civil and criminal proceedings arise out of the same conduct. Here, there are important differences between the two proceedings. This is not a case where defendant is charged with civil and criminal violation of the same law, such as in United States v. American Radiator & Standard Sanitary Corp., 388 F. 2d 201 (3rd Cir. 1967). [Stay issued by district court dissolved by the Third Circuit as an abuse of discretion on other grounds.] Nor is it a case where defendants are not only charged with violation of the same law in civil and criminal proceedings, but the plaintiff in both proceedings is the same agency, as in Kordel, supra. (Civil administrative and criminal proceedings for violation of the Pure Food and Drug Act.)

Respondent bases its "similarity" argument upon the Commission's decision in Koscot Interplanetary, Inc., supra. The Commission remarked therein, and is relied upon by the respondent here, that:

> "The Commission's proceeding does not concern the same transactions as are involved in the criminal matters. We are not aware of any authority, and respondents point to none, which would require us to postpone the Commission proceeding simply because respondents also happen to be defendants in criminal proceedings arising out of activities different from those with which the administrative complaint is concerned." Koscot, at 261 to 262.

To state that the converse is true, however, that similar facts giving rise to civil and criminal proceedings require the staying of the civil proceeding, would be fallacious.

The case that respondent relies upon is Silver v. McCamey, 221 F. 2d 873 (D.C.Cir. 1955). In that case the court reviewed a district court order staying an administrative proceeding. McCamey, a taxicab

driver, had been accused of rape and armed robbery. The licensing authority held a hearing and revoked his license after he was acquitted in the rape case, but prior to the criminal trial in the robbery case. (He was subsequently acquitted.) The basis for revoking his license was the criminal activity of which he had been accused. The court stated the general rule as:

> "Due process is not observed if an accused person is subjected, without his consent, to an administrative hearing on a serious criminal charge that is pending against him. His necessary defense in the administrative hearing may disclose his evidence long in advance of his criminal trial and prejudice his defense in that trial." (At 874-875)

The facts in that case distinguish it from the instant proceeding. The court in Silver was concerned by the fact that the defendant was an individual (here, respondent is a corporation); that both proceedings were concerned with precisely the same charges (whereas here, the charges are at best similar); and that in defending against his loss of license, he might disclose information not otherwise available to the prosecution, compromising his Fifth Amendment right to silence (which right corporate respondent does not have).

However, whether Silver can be distinguished or not is no longer relevant. The Supreme Court in Kordel, supra, held, 8 to 0, that:

> "The public interest in protecting consumers throughout the Nation from misbranded drugs requires prompt action by the agency charged with responsibility for administration of the federal food and drug laws. . . . it would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial." (At 11)

In that case, defendants were charged with both civil and criminal violations of the Pure Food and Drug Act. They alleged that answering interrogatories propounded by the FDA under court compulsion constituted a denial of their constitutional rights. The Court, in overruling the Sixth Circuit, held that the district court was correct in refusing to issue the stay requested.

In the instant matter there are distinguishing facts which argue even more forcefully for denial of a stay. The Court in Kordel was willing to accept the pursuit of civil and criminal remedies by the same agency;

here the Commission and the Justice Department are separate agencies. The Kordel defendants were accused of violating the same law in the civil and criminal cases; here, respondent stands accused under different laws. And in Kordel the civil and criminal cases concerned precisely the same facts; here, the facts underlying the two cases differ extensively.

Recognizing the new principle, the District of Columbia Court of Appeals, in Gordon v. Federal Deposit Insurance Corp., 427 F. 2d 573 (1970), held:

> "There may be cases where the requirement that a criminal defendant participate in a civil action, at peril of being denied some portion of his worldly goods, violates concepts of elementary fairness in view of the defendant's position in an inter-related criminal prosecution. On the other hand, the fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both civil and criminal litigation. The overall interest of the courts that justice be done may very well require that the compensation and remedy due a civil plaintiff should not be delayed (and possibly denied). The court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side. . . . Defendant seeks to distinguish our prior Gordon case on the ground that the present case involves the FDIC, an arm of the same Government that is prosecuting the criminal case. That factor is not irrelevant, but it is not decisive against proceeding with the civil action. Indeed, it may be influential in the opposite direction. (At 580.)

Thus, the court holds that the denial of a stay by the district court was not an abuse of discretion and based upon sound legal principles. The decision in Silver is impliedly overruled.

Thus, respondent has failed to demonstrate that the fact that similarities exist between civil and criminal proceedings require a stay. Respondent has inaccurately interpreted Koscot, supra, and relies heavily on Silver, which has been impliedly overruled in Kordel, and is no longer followed by the court which initially issued the decision. See, Gordon, supra.

(3) "Other methods of protecting defendant's rights [illegible] adequate or inadequate."

Respondent claims that [illegible] to due process cannot be protected except by granting [illegible] completion of the criminal trial. This simply [illegible] have consistently demonstrated full regard [illegible] to respondent's right to due process. Additional protective devices exist within the Rules of Practice. Thus, when respondent's rights may imminently be violated, or the trial in the criminal case be jeopardized, respondent may apply to the Administrative Law Judge for a protective order or for in camera treatment of [illegible] or testimonial evidence. Respondent has simply failed to show that it faces any immediate, clear-cut danger. It may fear that by continuing the discovery process or by appearing at the civil trial it may disclose defense strategy prematurely, but it is clear, under the decision in Simon, supra, that no rights are thus violated.

Respondent's reliance on Campbell v. Eastland, 307 F.2d 478 (5th Cir. 1962) is misplaced. [illegible] civil discovery of government documents [illegible] respondent (Motion to Stay, at 5 to 6), [illegible] the "private interest in civil litigation and the [illegible] prosecution." (At 487.) [illegible] is a civil case against the public [illegible] merely indemnify [illegible] might have to [illegible] criminal proceeding.

Accordingly, as respondent has failed to bring [illegible] of the tests laid down by Kordel, and as respondent's proposed test for granting stays of civil proceedings is wholly without merit, respondent has failed to demonstrate that it has a [illegible] of law, to a stay of these proceedings pending [illegible] criminal case.

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ISSUE II

WHETHER RESPONDENT IS ENTITLED TO A STAY OF COMMISSION PROCEEDINGS BECAUSE THE CIVIL AND CRIMINAL ACTIONS MAY POSSIBLY OVERLAP

Trial was originally scheduled to commence on February 17, 1976 in the Commission's case. This date was explicitly agreed to by counsel for respondent. The anticipated length of complaint counsel's case would have permitted completion of hearings in this matter long before October 5, 1976, and allowed sufficient time for respondent to prepare and put on its defense. With the delay granted by Judge Teetor, at the explicit request of respondent, completion of the Commission case prior to October 5, 1976 is probable but not certain. However, respondent cannot ask for extensions and adjournments for its own convenience and then claim it is prejudiced thereby. Any conflict in actual trial dates is a direct result of respondent's penchant for delaying and impeding the Commission's case.

Moreover, if it were to appear that an actual conflict on a particular trial date was likely, respondent can move in the administrative proceeding for such adjournment as it deems necessary.

Respondent has at all times in both proceedings been represented by counsel. Mr. George Gallantz now represents respondent in the criminal case, while Messrs. Theodore Schreier, I. David Parkoff, David Waldman and Morton Mancher represent respondent in the civil proceeding. According to the record so far in the criminal case, numerous other attorneys have appeared for the other defendants in the criminal case. Further, respondent has made no showing that any person whose attendance is required at the criminal case is also required to be present at the civil case.

Finally, complaint counsel are aware of no authority which requires the courts to schedule cases against large corporations, well able to retain attorneys to defend themselves, in any particular order. It is not at all unusual for a corporation to be the defendant in many lawsuits at any one time. The magnitude or importance of these actions should not operate to alter the rule. Respondent has, from time to time, been the defendant in class action suits asking for vast damages. Respondent also is regularly involved in preparing lengthy filings for presentation to numerous government agencies, including the Department of Housing & Urban Development, the Securities and Exchange Commission and the Secretary of State of the State of New York. One of the responsibilities of doing business on the scale respondent has voluntarily chosen is that legal representation may be required for its various activities at several places on the same day.

Accordingly, as respondent has failed to demonstrate that the possibility of simultaneous trial dates is anything but the result of its own delaying tactics, or that it is cannot be adequately represented if both trials happen to overlap to some extent, or that such overlap is at all unusual for such a large corporation, its motion for a stay of these proceedings should be denied. If respondent can demonstrate actual prejudice or harm from concurrent trial dates, a motion at that time to the Administrative Law Judge requesting a temporary adjournment would be the appropriate method of proceeding.

ISSUE III

WHETHER THE PROPOSED TRIAL SCHEDULE FOR THE FEDERAL TRADE COMMISSION PROCEEDING PROVIDES RESPONDENT ADEQUATE TIME TO PREPARE ITS DEFENSE

The trial schedule established by Judge Teetor's order rescheduling pretrial proceedings and postponing the hearing date to March 29, 1976, provides respondent adequate time to prepare its defense. The hearing date will be more than one year after the complaint was issued by the Commission. Contrary to the assertions of Mr. Maneker, respondent is not in the position of commencing its defense as of December, 1975. The complaint was issued on March 11, 1975, more than nine full months ago. An answer was prepared, numerous pretrial conferences and discussions were conducted, and many motions were made and answered. Respondent has been fully and vigorously defending itself against the charges contained in the complaint, represented this entire time by its counsel of record, Solomon H. Friend, Theodore R. Schreier, and I. David Parkoff.

At the first prehearing conference held on May 13, 1975, complaint counsel announced they would be prepared for trial in November, 1975. (Transcript, at 9.) Because of the delays in obtaining subpoenaed documents, occasioned by respondent's requests for extensions of time, (discussed supra), Judge Hanscom set up a prehearing conference on October 30, 1975, to finalize deadlines leading to a firm trial date.

The pretrial conference commenced with Theodore H. Schreier's account of the indictments handed down in the criminal case. With this knowledge, counsel for both sides (respondent was represented by Theodore R. Schreier, I. David Parkoff, and David M. Waldman), under the guidance of Administrative Law Judge Daniel H. Hanscom, fashioned a schedule for respondent's discovery and remaining other matters that would comfortably permit the trial to commence on February 17, 1976. No discovery impediments or difficulties arising

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out of the criminal case were identified by respondent's counsel; in fact, expeditious trial was sought.

Mr. Maneker was retained thereafter, and apparently desires to start from the beginning. Mr. Maneker, or any other counsel retained to assist with the litigation procedure, should not be permitted to characterize himself as operating in a vacuum. He has untrammeled access to two full-time counsel of record who have complete knowledge of this case and of the policies and procedures of the corporation. David M. Waldman, Esq. is familiar with corporate documents including all those transmitted to complaint counsel. Mr. Maneker does not have to "reinvent the wheel" in order to prepare respondent's defense.

Judge Teelor, by order dated December 2, 1975, has extended the trial date to March 29, 1976, and has extended the discovery deadlines approximately six weeks. This was done as a matter of discretion in order to accomodate Mr. Maneker's expressed need for an opportunity to familiarize himself with the case. We have been informed by Mr. Maneker that he was brought into the case on October 28, 1975, the date the indictments were returned. Thus, Mr. Maneker has had to date more than two months to familiarize himself with the case. The three remaining months provide ample time to prepare respondent's defense. (Note that Judge Hanscom's order, dated October 31, 1975, also allows respondent six weeks to prepare for its defense after the completion of the Commission's case-in-chief.)

Notwithstanding the time for preparation already used by respondent and the additional time obtained at the request of Mr. Maneker, he still insists he needs a minimum of six more months. In support of this position he refers to the pre-trial conference held in the criminal case. Mr. Maneker would have us believe that the judge presiding over the criminal trial was persuaded by defense counsel that, because of the complexity of the case, the enormous quantity of documents involved and the estimated six weeks for presentation of the prosecution's case, the trial date should be set on October 5, 1976, instead of his original intention of March, 1976. This characterization of the judge's motives is quite misleading. The Judge clearly stated:

> "I think the only thing that makes me accede to the the October 1st date is the possibility, the strong possibility as I see it, of a jury not only being asked to sit for a minimum of three months, but taking it into the summer and the difficulty of getting a jury under those circumstances... that I think is going to be the only difficulty, really." U. S. v. AMREP, supra, 11-18-75 transcript at 32.

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Assuming, arguendo, that additional attorneys need be added to the defense team, respondent must bear the consequences of its decision to rely on house counsel in this proceeding. It has been on notice since March, 1974, one year prior to the issuance of the Commission's complaint, that it and/or its employees might be indicted by the Federal Grand Jury in the Southern District of New York. It further had notice, perhaps even before the Commission's complaint was issued, that its General Counsel, Solomon Friend, was a "target" of the grand jury investigation. (See statement by Mr. Friend's counsel, William R. Glendon, Esq., in U.S. v. AMREP, supra, at 32). Now that Mr. Friend has been indicted, respondent cannot claim surprise in support of their motion to stay these proceedings. It was aware of the possible loss of Mr. Friend from the defense team at a time when a hearing date had been agreed upon, yet took no action to cover the eventuality that became a reality. Respondent cannot be heard to demand a trial date in 1977 because it gambled and lost on its first choice of counsel.

As described in the Statement of Facts set forth in this response, Judge Teetor has set four discovery deadlines. Two of them fall on January 9, 1976. The first requires respondent to reply to complaint counsel's November 13, 1975 "Report on Deficiencies in Respondent's Subpoena Return." Telephonic conversations between complaint counsel and David M. Waldman, aimed at resolving these deficiencies, were discontinued at the insistence of Mr. Maneker. The documents and materials identified as missing from the return entail no burden of production if they are in existence. If they do not exist, respondent should so state and explain.

Mr. Maneker's suggestion that there may be no one in the corporation who will voluntarily answer the report is suspect speculation. As noted at page 8, herein, there are many unindicted officers, directors and employees who have the ability to provide the requisite information. As a corporate entity, respondent cannot assert a privilege against self-incrimination and is under a duty to find knowledgeble employees who can provide the answers. Kordel, supra; U.S. v. 3963 Bottles . . ., 265 F.2d 332, 336 (7th Cir. 1959); cert. denied, 360 U.S. 931.

The second of the January 9, 1976, deadlines is for response to the second outstanding subpoena duces tecum. That subpoena requests one item of information: data on resales or transfers of land sales contracts at respondent's subdivisions. Mr. Waldman has already advised us that the data was readily available for the largest subdivision, Rio Rancho, but was noncommittal regarding the other three developments. There has been absolutely no claim of burden of production made by respondent with regard to this subpoena.

The third deadline falls on January 16, 1976. According to Judge Teetor's discovery schedule, respondent must answer or object to complaint counsel's first request for admissions, dated November 12, 1975. Mr. Maneker hints at a burden created by this request for admissions that contains 865 separate requests. The need for such a large number is occasioned solely by respondent's method of doing business and its decision to deny nearly all of the Commission's complaint. (See discussion at p. 4, herein.) Mr. Maneker raises the issue that there may be no employee of the company who can answer these requests. Once again such a statement does not dispose of respondent's duty to appoint an employee who will answer. Kordel, supra; U.S. v. 3963 Bottles . . ., supra.

Finally, respondent is required by Judge Teetor's order to make available, during the first two weeks of February, 1976, eleven corporate employees identified in complaint counsel's application for depositions dated November 28, 1975. Mr. Maneker expresses concern over having a short period of time to prepare these witnesses who are located in three different cities. He does not mention that four of the individuals are within one mile of Mr. Maneker's office in New York, two are located at or near respondent's development at Silver Springs Shores, Florida, and the remaining five are located at or near respondent's development at Rio Rancho Estates, New Mexico. Mr. Maneker has already visited Rio Rancho on at least one occasion and has probably spoken with the individuals at that subdivision. We believe there is ample time for counsel to prepare these employees for depositions in early February.

Complaint counsel are required by the scheduling order of Judge Teetor to completely disclose their case on or before February 27, 1976. (Thirty-one days before the hearing date of March 29, 1976.) First, an exhibit list is required with references to complaint paragraph(s) to indicate the primary and secondary relevance claimed for each document. Also, a second request for admissions relating to authentication of these documents is to be filed at that time. These requests for admission should be easily answered because the great majority of the exhibits are from respondent's files. Thirty-one days is ample time to re-review these documents that were originally provided by respondent's counsel. Second, complaint counsel must produce its list of witnesses with a summary of the expected testimony of each witness. There will be approximately 150 witnesses predominantly located in and around Albuquerque, New Mexico; Kansas City, St Louis, and Branson, Missouri; Ocala, Florida; and New York, New York.

Originally, under Judge Hanscom's order, respondent was to have eighteen days between obtaining the witness list and the commencement of hearings. This time frame was agreed to by Theodore R. Schreier at the prehearing conference held on October 30, 1975. Judge Teetor

has now extended this time period to thirty-one days. Assuming a firm trial date, complaint counsel are willing to discuss any reasonable requests for earlier serial production to facilitate contacting these witnesses. In fact, Judge Teetor has insisted that we turn over as many exhibits and/or testimonial summaries as we can in advance of February 27, 1976.

In summary, there is nothing unfair about requiring respondent to adhere to the proposed trial schedule. Respondent has waited until two months before the hearing in this matter to change counsel and now wishes to start the litigation anew. The public interest in this matter prohibits any extensions of time of the magnitude proposed in Mr. Maneker's motion to stay.

Legitimate concern for fairness to respondent must be balanced with concern here for the other side. The real party in interest here is not complaint counsel, but, rather, the public. In vast numbers citizens continue to be subjected daily to entreaties to "invest" in respondent's land. They are joined by all those consumers presently under contracts of purchase whose individual monthly payments amount to an annual torrent--more than thirty-five million dollars were deposited in respondent's coffers in fiscal 1975. Many consumers are fearful of halting their payments because of the contract provision that provides for forfeiture of all monies paid should they discontinue their payments. Many other consumers have defaulted and look towards the Commission as their representative to secure just redress. These are the vital interests that must be balanced against the unsubstantiated protestations of respondent's counsel when any thought of further delay in this matter is entertained. Respondent is not talking of weeks or months, but a delay until 1977--nearly two years after issuance of the complaint. Another year's delay will mean consumers will pour another thirty-five million dollars into respondent's pockets.

It is the responsibility to protect the public against unfair and deceptive acts or practices that requires us to say that one year after issuance of the complaint is time enough for respondent to appear in court and to defend itself against the charges in this case.

The only way that the integrity of Federal Trade Commission proceedings can be maintained is for the trial in this case to commence as soon as possible.

Finally, respondent challenges the validity of the Commission's desire for a timely trial by citing the failure of the Commission to seek injunctive relief. The decision not to seek such relief (pursuant to Section 13 of the Federal Trade Commission Act, 15 U.S.C. 53) is a matter of administrative discretion and in no way justifies the extraordinary delay requested by respondent. The policy and tactical

considerations underlying that decision are not inconsistent with the concern expressed herein over the described continuing public injury. An expeditious trial will best serve to alleviate that harm.

CONCLUSION

Respondent's Motion in seeking a stay of this proceeding as a matter of law is wholly lacking in merit and substance. Accordingly, it should be denied by the Administrative Law Judge.

Any part of respondent's motion that seeks a stay of this proceeding for reasons of public policy or administrative discretion is equally lacking in merit and substance. It should be certified to the Commission with a recommendation that the requested relief be denied.

Respondent's Motion in seeking a stay of all discovery requirements imposed on respondent pending determination of this Motion is wholly lacking in merit and substance. Accordingly, it should be denied by the Administrative Law Judge.

Respectfully submitted,

Perry W. Winston

Jon R. Calhoun

George E. Schulman
Counsel Supporting the Complaint

Dated: January 2, 1976

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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AMREP Corp.,

Plaintiff,

-against-

FEDERAL TRADE COMMISSION,

Defendant.

75 Civ. 4013

- *

New York, New York
January 5, 1976
4:45 P.M.

B e f o r e:

HON. LAWRENCE W. PIERCE,

District Judge.

A p p e a r a n c e s:

PROSKAUER, ROSE, GOETZ & MENDELSOHN, ESQS.,
Attorneys for plaintiff,
MORTON M. MANEKER, ESQ. and
STEVEN S. MILLER, ESQ., of Counsel.

THOMAS J. CAHILL, ESQ., United States Attorney,
Attorney for defendant,
MRS. NAOMI REICE BUCHWALD,
Assistant United States Attorney
and
D. BARRY MORRIS, ESQ.,
Attorney, Federal Trade Commission.

THE COURT: Good afternoon.

Now, appearing for plaintiff AMREP is Mr. Morton Maneker from Proskauer, Rose?

MR. MANEKER: Yes, your Honor.

THE COURT: And appearing for the Federal Trade Commission is Mrs. Naomi Buchwald, Assistant United States Attorney, and Mr. D. Barry Morris.

This hearing is to consider an order to show cause brought on by AMREP under docket number 75 Civ. 4013 and seeking both an order under Rule 60(b), the Federal Rules of Civil Procedure, vacating this Court's order of November 3, 1975, dismissing this case, and an order under Rule 65, Federal Rules of Civil Procedure, issuing a preliminary injunction against further prosecution of the FTC pending disposition of the related criminal trial before Judge Metzner in this court.

The first issue is whether this Court has jurisdiction.

After reviewing the papers submitted, it's my view that I have no jurisdiction to enter an order for two reasons, two independent reasons.

First, AMREP has filed a notice of appeal appealing from the dismissal of 75 Civ. 4013. It would appear that that deprives the District Court of jurisdiction.

Next, the relief sought in the present application is entirely different from that which was sought in 75 Civ. 4013. This appeal is from a different administrative action, the relief sought is different and the legal basis for the relief sought is different.

In short, there is no civil complaint, no action now filed in this court, which raises the claims which AMREP is attempting to put before the Court by means of the present order to show cause.

So I would ask counsel for AMREP to address these issues and tell me why, if at all, I can conclude that I have jurisdiction in this matter.

MR. MANEKER: Well, I think one thing is very clear, your Honor, that the jurisdictional issues the Commission is seeking to raise have no bearing on the power to do what you are asked to do this afternoon, since your power to issue restraining orders to stay is designed for the very purpose of giving you an opportunity to consider and hear and preserve the status quo while you are doing that.

So there is no problem about getting you the time necessary to go into these issues.

THE COURT: Yes, but the status quo of what? What is before me that presents a status quo for me to

consider one way or the other?

MR. MANEKER: On the basic jurisdictional questions which you raised as to granting the relief sought on the motion which we asked an order to show cause to bring on and a stay pending its disposition, going to that. If you are asking what the status quo is in that area, what jurisdiction do you have --

THE COURT: I am really asking what is before me. What's alive before me in this case? Why shouldn't this issue be raised, if at all, before some judge of this court, possibly me, possibly some other judge, whosever name is drawn from the wheel, in an entirely different action?

Is not the issue raised in the previous civil action which I ruled on, first of all, beyond my reach now that it is on appeal in the Court of Appeals? And secondly, isn't it true that the issues raised here are quite different, the relief sought is quite different, and the basis in your papers is quite different from the issues in the other case?

MR. MANEKER: As far as the notice of appeal, your Honor, it is very clear, going to that issue, that you have the power to grant a stay pending appeal.

THE COURT: Pending what?

MR. MANEKER: Pendir the consideration by the Second Circuit of the appeal which has been taken to it. Indeed, the rule requires that we must go to you first before we ask the Second Circuit.

THE COURT: Perhaps you can direct my attention specifically to the rule or the section of the rule that you have in mind.

MR. MANEKER: Rule 8 of the Federal Rules of Appellate Procedure. Miss Kotkin I see has a copy of the rule. Rule 8, which deals with stays, injunctions, etc. pending appeal, says that:

> "A motion for such relief may be made to the Court of Appeals or to a judge thereof, but the motion show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action."

In other words, the Court of Appeals is saying in these rules to the District Court: "Obviously you know a lot more about the case you have just passed on than we do about the appeal just coming to us."

THE COURT: It speaks of pending appeal.

Counsel, you are on appeal.

MR. MANEKER: Pending appeal means just that.

THE COURT: If they meant pending determination upon appeal, don't you think they would have said so?

MR. MANEKER: I think it is very clear if I were to go up to that court, having filed a notice of appeal, asking for this stay, the first question I would be greeted with is: "Have you gone to the District Court? And if not, why not?" I have done it too many times.

THE COURT: It may be, frankly, we need not waste that much time on this point for the time being.

MR. MANEKER: For the substantive answer, may I refer you to it? The citations in the government's brief stop short of the issues.

The Second Circuit has clearly held that the procedure, particularly in a 60(b) application, is not to go first to the Circuit even where your jurisdiction has been preempted by a notice of appeal. By the way, that isn't clear, whether it happens on the docketing of the record on appeal.

THE COURT: Do you want to move to the other question?

MR. MANEKER: If I may just finish that. "In a 60(b), go to the District Court, ask if it would grant

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the motion, then come to us and ask our permission to remand. Do not bother us if the District Court says it will deny it."

The relevant Circuit cases are at 303 F.2d 430, 312 F.2d 711 and I see there are two lower court cases.

THE COURT: Give me the titles on 303 and 312.

MR. MANEKER: The titles are Ryan vs The United States Lines, 303 F.2d 430; and Weiss vs Hunna, 312 F.2d 711.

I don't know if your Honor likes quotes read to him, but I can read the relevant quotations or show them to you, if you prefer.

THE COURT: You go ahead, Counsel.

MR. MANEKER: The second jurisdictional issue that you have asked me to address myself to, Judge, is aren't there new facts here which make it a different case from the one you acted on.

Yes, I certainly agree. One of the new facts was the indictment which was the ground for your dismissal. Other new facts are the scheduling, the conflicts which have occurred in both the FTC and the criminal proceeding since then. And that is why we are here under section (b) and that is what section (b) is designed to do.

In other words, if you had to start a new case in an equity proceeding where events overtake the

proceeding every time, you would never catch up with the events. The point of 60(b), or one of its purposes, is to permit you to bring into the District Court (1) if you think the Court is in error, and I respectfully would like the right to discuss with your Honor the impact of the indictment which was already before you when you acted; and (2) new facts which will indicate that the Court ought to reconsider what it did.

If we started a new case, we would have some read res adjudicata problems because the indictment was before you, which we say is the key operative fact that creates this problem and, of course, procedurally we would never catch up.

Just as the Commission wants to dismiss the application as moot and you dismiss it as moot, we go on from mootness to mootness. You have to have an expeditious procedure whereby proceedings catch up with events, not the other way. 60(b) is it, your Honor.

That is not to say that there aren't different facts. We think it will make this proceeding of the two pleadings not moot but even more true in different ways than the arguments before your Honor. That is why we moved under 60(b) and that is why you have a live case in front of you to act on even after the dismissal. That

is what 60(b) is there for. That is why I did not simply file a notice of appeal and go to the Court of Appeals with a motion for an injunction, because I think they would have properly said to me, "These are new facts affecting the District Court's judgment which you were obliged to bring to its attention in order that it may consider them."

THE COURT: All right.

MR. MANEKER: Having labored so long to establish your Honor's jurisdiction or the Court's jurisdiction, you have a preliminary problem about who should exercise it.

I have filed what I cannot remember doing before -- two applications for the identical relief at the same time before two different judges of this court. I do not advocate such a procedure. I have no desire to impose on you as the evening goes on, and obviously we have a complex one by the tail, and then impose on Judge Metzner tomorrow morning. It does happen that you both have jurisdiction.

THE COURT: That's one of the questions.

MR. MANEKER: I at least think that it is my position, and I hope to be able to show it, that you both have jurisdiction.

And what should happen in that case? I want to preserve my objections and invoke the criminal jurisdiction that is available to me, preserve my objections in that proceeding. In a sense, the preferred course, from the way I read Second Circuit cases in this area, is that civil proceedings deal with its own problems. Since I think this is the proceeding, or the FTC proceeding, a review of that ought to be deferred.

But it is not a question of whose docket number, really. I think it is a question of which judge has the continuing responsibility. We have a difficult situation. You have parallel, simultaneous, massive proceedings dealing with the same charges and the same facts. Somebody has to take them --

THE COURT: I think you are getting close to the merits, and I don't want to go into that yet.

MR. MANEKER: Somebody has to take them in hand. I don't think two judges ought to take them in hand. I don't want to suggest which among you or how. I do want to make clear that it is not my idea to occupy you and Judge Metzner on the same point.

THE COURT: Why don't we limit ourselves to this jurisdictional aspect first and then if we have to go into the other we will.

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On the merits of your application. Who wishes to be heard, Mrs. Buchwald or Mr. Morris?

MRS. BUCHWALD: I will.

Your Honor, I would like to address myself to certain of the comments of plaintiff's counsel.

First, the reference to Rule 8 of the Federal Rules of Appellate Procedure, that is a rule which provides for a procedure for a District Court to stay its decision pending appeal. The fact is your decision which dismissed the complaint of AMREP is as correct today as what was correct on November 3rd, when you issued it.

That case that was before you sought to review a particular decision of the Federal Trade Commission. That decision denied the application for a stay of the Federal Trade Commission proceedings pending the completion of the grand jury investigation. That grand jury investigation ended when the indictment was filed, and your Honor properly dismissed that case as moot. It simply doesn't make sense to now stay that decision which is completely proper.

The second comment plaintiff's counsel made was that there were new facts and that was why he was back here today. But those new facts, your Honor, get us to the second jurisdictional problem which we raised in our

papers and which you have discussed, and that is that the complaint which is before your Honor in 75 Civ. 4013 does not form a basis for the application for an order to show cause which is sought here today because it doesn't raise any issues which are in the order to show cause. That complaint is over and done with and it is time to start again.

I do not think that there is any kind of res adjudicata problem. That was an application for a stay pending the completion of a grand jury investigation. This is an application for a stay pending the outcome of a criminal trial. Those are entirely different cases, as your Honor is well aware. The issues on the merits are entirely different from the issues which were raised before your Honor in the other case. So I don't think there is any res adjudicata problem here.

We would urge that there is no jurisdiction because the law is absolutely clear the filing of a notice of appeal does oust this Court from jurisdiction, and we cited Judge Friendly and Judge Moore's discussion on this point; and equally clear, your Honor, as I said before, there is no underlying complaint in which this order to show cause may properly be brought on.

As your Honor knows, we have a third jurisdictional

objection. That is that there has been no exhaustion of administrative remedies. The plaintiffs do not show they come within the clear exception of that rule and they do not show there is irreparable harm.

THE COURT: Anything further, Counsel?

MR. MANEKER: Yes, your Honor.

Your Honor, the U. S. Attorney said your decision was proper, that the indictment rendered it moot. That is what you are asked to reconsider.

The assertion is it is no longer necessary or it is no longer possible to enjoin grand jury proceedings, which was the relief sought. Of course it was the relief sought on those facts. The facts have changed. The indictment was before you. To start a new case on the facts before you of course does raise res adjudicata problems, and to take cognizance of that indictment and to take cognizance of the subsequent facts if the purpose of Rule 60(b). It is not a question of what the complaint says; it's a question of what the facts are since the complaint.

Now, if the technical amendment of the complaint follows, of course the stay that is needed to buy the time to do that, that's easy to do. I don't think it's necessary because the FTC motion that was made sought a stay pending the grand jury investigation and any proceedings growing

out of it. The proceeding before you focussed on the grand jury because that was what was happening at the time. To start a new proceeding when the grand jury terminated before your decision and was the cause of it of course is to raise and bring before another judge something which you have decided, and that I don't think we can do and it falls properly under Rule 60(b).

The exhaustion point, if you would like me to deal with that, I can quickly dispose of it.

THE COURT: I think not. I am going to dispose of it on the jurisdictional question, Counsel.

The preliminary question to be addressed here is whether the substantive issues raised by counsel on this application are properly before me, that is, whether they are properly before the Court in the context of the previous civil action bearing docket number 75 Civ. 4013.

I note first that the filing of a notice of appeal in the civil action in this Court's view clearly deprives the Court of jurisdiction to enter an order under Rule 60(b). See Weiss v. Hunna, 312 F.2d 711 (2d Cir. 1963). But even if for some reason this were not so, the present application in the Court's view is not properly within the context of 75 Civil 4013.

The earlier civil action was brought as an appeal

from the decisions of an administrative law judge and the Federal Trade Commission dated June 27, 1975, and July 29, 1975, respectively, and those decisions denied Amrep's application for a stay of the FTC investigation during the pendency of the criminal investigation then going on. The relief sought in the civil action was a stay of the FTC proceedings "during the pendency of the criminal investigation." In essence, the basis for the relief sought was that publicity from the civil FTC investigation might prejudice the ongoing criminal investigation.

On October 28, 1975, the criminal investigation was concluded with the filing of an indictment. Since, in my view, the civil action sought relief only pending the completion of the criminal investigation, on November 3, 1975, I signed orders denying Amrep's motion for a preliminary injunction and granting the FTC motion to dismiss the civil action; both were denied on the ground that the civil action was moot after the filing of the indictment.

The present application is an appeal from certain decisions dated December 29, 1975, of an administrative law judge, denying Amrep's request for an immediate stay of all discovery in the FTC civil proceeding and deferring any ruling on Amrep's application for a deferral of the entire FTC investigation and trial during the pendency of

the criminal trial in this district before Judge Metzner, that case before Judge Metzner bearing docket number 75 Crim. 1023. Thus, a different agency action is being appealed from now than was appealed in 75 Civ. 4013.

The present application seeks an injunction against further prosecution of the FTC proceeding until conclusion of the trial of the criminal case before Judge Metzner. Thus, different relief is sought from that which was sought in 75 Civ. 4013.

Finally, the basis for the present application is that the conflict between the two proceedings, the civil FTC investigation and the criminal trial before Judge Metzner, makes it impossible for Amrep to proceed adequately with both actions at the same time. Thus, the basis for the relief sought is also different from that originally presented in 75 Civ. 4013.

Having considered all of these factors, I adhere to my original decision dismissing the civil action 75 Civ. 4013 as moot, and nothing presented here convinces me that that action was not then or is not now moot. Rather, it appears to me that Amrep has a new grievance which, if it is to be pursued at all, should be pursued by means of a new civil action in this court.

Therefore, because I have concluded that I have

no jurisdiction over this application, the application of Amrep for an order pursuant to Rule 60(b) of the Federal Rules of Civil Procedure vacating this Court's orders of November 3, 1975, and for other relief is denied, and I am not signing the order to show cause. Consequently, I do not reach or rule upon the merits of the motion for a preliminary injunction, nor do I express any view on related issues such as the appealability of the administrative decisions below.

It is so ordered.

Thank you.

MR. MANEKER: Your Honor, would your order show, as I think appropriate, that we did make an application pursuant to Rule 8 for an injunction pending appeal and I take it you are denying it?

THE COURT: What has occurred here speaks for itself, whatever its import.

Good day.

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S. Ct 1/6/76
4:30 PM

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PERRY W. WINSTON, ESQ. REPORT DELIVERY

FEDERAL TRADE COMMISSION

LOS ANGELES REGIONAL OFFICE

ROOM 13209, FEDERAL BUILDING

11000 WILSHIRE BOULEVARD

LOS ANGELES, CALIF. 90024

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HONORABLE PAUL R. TEETOR REPORT DELIVERY

ADMINISTRATIVE LAW JUDGE

FEDERAL TRADE COMMISSION

PENNSYLVANIA AVENUE & 6TH STREET, N.W.

WASHINGTO, D.C. 20580

RE: AMREP CORP., D.9018

URGENT APPLICATION IS HEREBY MADE TO THE ADMINISTRATIVE LAW JUDGE, PURSUANT TO SECTION 3.23(B) OF THE FTC RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS, FOR THE DETERMINATIONS REQUIRED THEREIN TO PERMIT AMREP CORP. TO APPLY TO THE FEDERAL TRADE COMMISSION FOR REVIEW OF THE ORDER ENTERED HEREIN ON DECEMBER 29, 1975 DENYING A STAY OF DISCOVERY PROCEEDINGS PENDING DETERMINATION OF THE MOTION FILED HEREIN ON DECEMBER 19, 1975, AND ANY ORDER HEREAFTER ENTERED DENYING, IN WHOLE OR IN PART, OTHER RELIEF SOUGHT IN SUCH MOTION.

APPLICATION IS ALSO HEREBY MADE FOR A STAY OF PROCEEDINGS PURSUANT TO SECTION 3.23(C) OF SUCH FTC RULES PENDING DETERMINATIONS BY THE ADMINISTRATIVE LAW JUDGE AND THE FEDERAL TRADE COMMISSION OF THE APPEALS HEREIN SOUGHT.

THE GROUNDS FOR THE APPLICATIONS ARE SET FORTH IN THE MEMORANDUM OF LAW ACCOMPANYING THE MOTION OF DECEMBER 19, 1975.

A COPY OF THIS APPLICATION IS BEING SENT TO FEDERAL TRADE COMMISSION COMPLAINT COUNSEL.

PROSKAUER ROSE GOETZ & MENDELSOHN
APPEARING SPECIALLY FOR AMREP CORP.
FOR PURPOSES OF THIS MOTION ONLY
BY: MORTON M. MANEKER

300 PARK AVENUE
NEW YORK, NEW YORK 10022
(212) 593-9426

CC: PERRY W. WINSTON, ESQ.
FEDERAL TRADE COMMISSION
LOS ANGELEX REGIONAL OFFICE
ROOM 13209, FEDERAL BUILDING
11000 WILSHIRE BOULEVARD
LOS ANGELES, CALIF. 90024

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- v s - : 75 Cr. 1023

AMREP CORPORATION, et al, :

Defendants. :

----------x

B e f o r e :

HON. CHARLES M. METZNER,
District Judge.

New York, N. Y.
January 9, 1976 - 10:30 a.m.

A p p e a r a n c e s :

THOMAS J. CAHILL, ESQ.,
United States Attorney for the
Southern District of New York;
By: NAOMI R. BUCHWALD, ESQ.

PATRICIA HYNES, ESQ.
- and -
D. BARRY MORRIS, ESQ.,
Attorneys for the Federal Trade Commission.

Messrs. PROSKAUER, ROSE, GOETZ & MENDELSOHN,
Attorneys for AMREP CORPORATION,
300 Park Avenue,
New York, New York;
By: MORTON MANEKER, ESQ.,
of counsel.

THE CLERK: Is the Government ready?

MS. BUCHWALD: Yes, sir.

THE CLERK: Federal Trade Commission?

MR. MORRIS: Yes.

THE CLERK: Defendant?

MR. MANEKER: Yes.

THE COURT: Before you start your argument I think I should say that after having reviewed your papers and researched the law on this question, I am convinced that the Court has jurisdiction to entertain this application.

Secondly, I am convinced that the movant corporation has exhausted its administrative remedies so that the matter is properly before the Court on the question of whether the Court should exercise its discretion, as Judge Lumbard indicated this Court would have a right to do under proper circumstances, in the Cordell case.

So would you confine your argument to that area, please. You may proceed.

MR. MANEKER: Your Honor's discretion should be exercised here in the extraordinary circumstances of this case, for two principal reasons:

First, a fair trial cannot be had in this Court if at the same time preparations necessary for the massive kind of trial that is contemplated here continue. The

estimates before you were on the order of three months. The complexity of the issues involved -- during the entire period of time, from today and from before today, until the date of trial, this corporation, its highest officers, its counsel --

THE COURT: Forget about the officers. They are individual defendants here and they have not joined in this application. I am not worried about that.

I made that point when we started the other day. I said I assume that all the defendants have joined in this and Mr. Galentz, from your firm, who merely came in to introduce you and then walked out, said, "Absolutely not." So don't tell me about the other defendants.

MR. MANEKER: No, your Honor, I am not pleading their rights in doing so.

What I am saying is that this corporation can prepare only through its own officers.

THE COURT: Or other employees.

MR. MANEKER: Or other employees.

THE COURT: You can appoint agents.

MR. MANEKER: Yes, we can, if we had them.

THE COURT: Go ahead.

MR. MANEKER: As representative of this corporate defendant, I have not had a real opportunity to

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discuss this with the attorneys for the individual defendants. I am confining myself to the representation of this corporate defendant, and this corporate defendant cannot prepare itself for this case, which it will obviously need the time and efforts of its officers to do so as they have carried out the practices and policies which are being challenged, if at the same time this corporate defendant and those officers, both the individual defendants here and other officers, and counsel and employees, are totally preoccupied as far as time span with the requirements of the Federal Trade Commission of equally massive size, which, under the schedule now laid down by the administrative judge in charge of that proceeding, would require week by week activity by way of pretrial discovery proceedings between now and March 29, and on March 29 we would go into actual hearings, at which the FTC says it will produce 150 witnesses in seven cities and will occupy three months.

The law judge does not plan to sit continuously as the physical aspects of it won't permit since we would be moving around the country, and thus, we will be occupied in April, we will be occupied between now and March 29 with subpoenas and with requests for admissions and with depositions scheduled, and with the receipt of witness and exhibit lists, and our preparation, once we have a list of

the 150 witnesses, and I don't know how many thousands of documents, we would be fully occupied between March -- now on March 29, with that, and on March 29 we would commence three months of hearings for the case in chief alone -- that is the estimate involved, and we would be sitting, albeit not continuously, but for the next -- what would it be? Non-continuous hearings -- three months of actual hearings have got to take up four months of time.

Most of your time for the next four months: April, May, June, July, sitting at hearings in Albuquerque and in Sante Fe and in St. Louis and in Kansas City and in Ocala, Florida and here in New York.

At the same time we are supposed to be preparing for this case we would be doing that -- I am not referring to lawyers, lawyers can be multiplied, but the responsible people with knowledge cannot -- and again we are to have six weeks to digest all that these three months of hearings have put on, in which to prepare a defense -- six weeks will presumably run any part of July that is not used up, and certainly all of August and some part of September, and starting in September we are to put on our defense in that proceeding, and I don't know enough about it to give you, in all candor, a reliable estimate of the time. But if I am sitting in a case for three months' hearing on the case

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in chief, I think a conservative estimate is six weeks, and it is not unfair to assume that it is almost equal to the three months for the case in chief, and so for at least the entire month of September and into October we would be presenting a case in chief -- a defense.

First of all, that presents a great likelihood that we won't be through by midnight October 4 so one can rush back from Albuquerque and come into your courtroom on October 5, and in the event such an actual conflict occurs the FTC is willing to concede that we don't have to sit in both places on the same day, and I assume there is an adjournment, and I say in all likelihood this case would not be finished, under the schedule now created, which is impossible to comply with for reasons I will be giving in a moment, and for which I have given, so that the FTC case, in all likelihood, cannot be finished before your trial and then you are faced with further adjournments here, which we strenuously oppose --

THE COURT: There won't be any adjournments of this case.

MR. MANEKER: We can't try that case with these individuals still under indictment here and put forward our best defense, which we are entitled to do.

So in all likelihood we can't finish that FTC

case by October 5 under their impossible schedule, which they are trying to compress the thing into.

If you try to live by that schedule, if your Honor does not enjoin what is going on, all you have done is invalidated in my mind both proceedings because what you have done is to deny adequate preparation time here, given the draining of the resources of the corporation in preparation, and it cannot do both things at the very same time.

You cannot spend three months in this compressed discovery and six months in actual trial and thus occupy the entire period between now and the trial date you set and really prepare a case here.

What you do is either you default somewhere or you do it inadequately in both places and you don't get a fair trial, and the validity of this proceeding -- I think I say conservatively -- is in jeopardy. I would hazard a guess that if this sort of thing is permitted to go on it is clearly invalidated and that proceeding is invalidated as well.

THE COURT: I am not worried about that proceeding. I am only worried about this one.

MR. MANEKER: I don't think you can hold a trial that you would be proud to call there and accord due process to the defendants when they have been subjected to

you will be brought up on a criminal charge and you have some cause for complaint -- there is an indictment here, there is a date for trial, and what would be done by subjecting this corporation to this kind of discovery, the need to put on its cross and its defenses, is to just subject them to what we have characterized as a complete dress rehearsal of their case before you immediately before this in the Federal Trade Commission case.

Therefore, as your Honor knows --

THE COURT: Wait a moment. In the Simon case didn't Judge Brieant indicate that he was going to try the case within two or three months?

MR. MANEKER: No. There had been no criminal trial at the time.

THE COURT: I'm sorry. Judge Brieant said, "I will try this case in February and March." And his decision is dated December.

MR. MANEKER: Yes, I remember that. But I also remember that the Court of Appeals said that no date --

THE COURT: I don't care what the Court of Appeals said. I say what the trial judge said. He was the one who was going to try it, not the Court of Appeals. He said, "I am going to try this case in February or March." The decision was in December. So in his mind he was trying the

case within two or three months.

MR. MANEKER: Apparently in the Court of Appeals' view that was not a firm trial date set because --

THE COURT: In my view it is.

MR. MANEKER: It has this significance, Judge: The Court of Appeals said, "Although the indictment was returned in October '66 no date has been set for the criminal trial in the Southern District."

THE COURT: Judge Lumbard did not read Judge Brieant's statement as to what he was going to do.

MR. MANEKER: He decided that case on that factual assumption because he goes on to say, "As appellees have made no showing that the taking of the depositions would interfere with the trial of the indictment, or with the preparation of their defense in that trial, we reverse Judge Brieant's order." And they begin the opinion that way and they conclude it with the same type of statement, in which they say, "Of course, if the District Court should find that the taking of the depositions of the appellees threatens to interfere with the trial of the indictment, or with such preparation of their defenses by the appellees as may be necessary, the District Court has the power to take appropriate action."

THE COURT: That is what we are talking about

right now. Your trial here was scheduled in November 18 to October 6, eleven months off. Your order came down December 2. You didn't budge until December 19th to get the FTC to do anything -- that is what your record shows.

MR. MANEKER: I beg your pardon, your Honor. Prior to December 2 -- and you will see this because it is in the December 2 order -- I said to the Administrative Law Judge, the first thing I want to do in this case is resolve the problem of its conflict with the criminal case, and I asked him for time to get into the case, to know what it is about and to bring that application before you.

I told him, "Judge Metzner has set the criminal case for October 5. I want you to know that right away because it presents an enormous problem."

His order of December 2 says, okay, make your motion addressed to that point by December 19, which we did. At nobody's request he went ahead -- in any event, over my objection, certainly not at my request, he went ahead with knowledge of the trial date before you, with knowledge that we were objecting to the conflict and that he had said make a motion on December 19 to bring that on, he set up this schedule of pretrial discovery proceedings and trial hearings.

So we brought that -- if it wasn't the first

conversation I ever had with that law judge it was second, that the first problem in this administrative proceeding was its conflict with the criminal trial, with the date set for trial therein, and the first thing we did in that case was to make this motion, which he has now had for three weeks. So there was no sitting around on our side, Judge.

We got into this case in November and it was -- November had not expired before I had told this orally to the law judge, that this was our first and primary problem. His order of December 2 reflects it because he set down a time in which I should bring that motion on, and that is the time I brought the motion on.

What I object to, and I objected to then, is that he went ahead and said, "However, I am going to decide whether you are disclosing your case in the criminal trial or whether you are being diverted from preparation in the criminal trial. You go ahead and comply with this order until such time as I decide your motion."

That left us in the position --

THE COURT: All right. You have given me one point, and that is that it is impossible for you to properly prepare for the criminal trial if you must adhere to the schedule fixed by the Administrative Law Judge.

What other point do you have?

MR. MANEKER: The second point, your Honor, that I started on, is that there is, as I am sure -- I am not as well versed in criminal proceedings as I am sure you, a judge sitting in this courthouse, is, but there is a very great distinction between the discovery available in civil and criminal cases, and a virtual prohibition or a very sparse permission for discovery in criminal cases. Thus --

THE COURT: This has not bothered the Court, has it?

MR. MANEKER: Yes, I think it has, your Honor. Two Courts of Appeal have --

THE COURT: It didn't bother the Supreme Court of the United States.

MR. MANEKER: No, I would disagree with your Honor. That was not before the Supreme Court of the United States.

THE COURT: I think it was inherent in its decision.

MR. MANEKER: The Supreme Court of the United States had just that very kind of a problem that I was alluding to, where the probability of a criminal prosecution was no more than a glean in the Government's eye at the

time that a stay was sought in the --

THE COURT: The question raised before the Court was that if you were compelled to proceed with the administrative proceeding and thereafter you were indicted, you would have had to disclose your case, and this did not bother the Court one iota.

MR. MANEKER: There is not a sentence of the Court's opinion that addresses itself --

THE COURT: That was the point that was raised and it did not bother the Court.

It said the Government could do what it wants.

MR. MANEKER: No, I disagree entirely.

THE COURT: Next point. Let's not you and I argue back and forth as to what the Court said.

MR. MANEKER: May I, your Honor?

THE COURT: What's the point? It's there. If I misinterpret it, then I misinterpret it. Let's go on to something else.

MR. MANEKER: I might be persuasive in my interpretation --

THE COURT: Let's go on to something else.

MR. MANEKER: Those are my two basic points as to the prejudice to be suffered by the corporate defendant.

I would like then to turn to what prejudice is

proceeding, it can't go validly forward either.

Secondly, your Honor, the idea that this has been a very urgent pressing matter is belied by the record. The FTC began this investigation almost three years ago. It meandered along through investigatory subpoenas and until the Grand Jury in this District started a year later, in March '74.

THE COURT: When did it start the investigation?

MR. MANEKER: The FTC investigation, April 1973. There was a resolution of the Commission passed authorizing the investigation at that time.

THE COURT: All right.

MR. MANEKER: In May '74, after the Grand Jury investigation here began, they issued another investigative subpoena. AMREP moved to quash that subpoena on the grounds similar to what we are arguing now: We are involved with two people at the same time. That motion was made in June '74, and to the best of my knowledge, at that point the FTC just sat back and did nothing for nine months. From June '74 to March '75 I have no information indicating that the FTC did anything in that proceeding. It sat on that motion and did nothing.

This is the urgent case that if your Honor adjourns it until this trial is over there will be severe prejudice

to the public. The Commission can sit with it for nine months during the course of the investigation and let it lie dormant, but now if it doesn't go forward, and if -- even though it jeopardizes the validity of the proceeding here, some great harm is done.

Two years ago Congress passed a statute that said the Commission should have the right to seek preliminary injunctive relief if it believes there is some injury due to some unfair and deceptive practice in the interim.

The Commission has had that power for over two years now, during the entire two-year period this investigation was proceeding. Since March '75 a complaint has been filed. At no time, despite the claims of urgency and pressing public interest, has the Commission sought a preliminary injunction here.

What I think is instructive is, why haven't they? We made this point as forcefully as we could in our briefs. What response have we evoked, what explanation? That if there is such injury by delay that in years there has been no application for injunctive relief.

Well, the brief before the Administrative Law Judge in response to our motion has all of, I think, two sentences at the very last page that responds to that:

"The decision not to seek such relief..." -- says the Commission -- "...is a matter of administrative discretion and in no way justifies the extraordinary delay requested by the respondent. The policy and tactical considerations..." -- which they never tell us what they are -- "...underlying that decision are not inconsistent with the concern expressed herein over the described continuing public injury."

Some unknown policy and tactical considerations have influenced the Commission's discretion so that in two years there has been no request for preliminary injunctive relief.

They held a press conference when they issued the complaint in March '75, saying the Commission is very concerned that the public know fully what it is doing, and it was reported in the trade press, and I believe in response to a question the Director of the Bureau of Consumer Protection told why he didn't move for -- was not contemplating moving for a preliminary injunction. He said, "I don't think there is any need for it. This company has net assets..." -- I believe the figure he gave was $46,000,000 -- "...and as long as they are not trying to dissipate those assets, I don't think there is any concern over the situation."

And that is, I think, the fact, your Honor, that there has been no need for urgent relief; that there has been no urgency to the proceeding at all; that it is a proceeding which ultimately is designed to adjudicate what has to be disclosed about this land and it will run its course, and that will be finally determined and anyone who has been hurt, the money is there and the Commission has restitution powers if there has been an appropriate situatior for the exercise of such powers.

It is particularly ironic to claim that there is some urgency here, that the only way you can get relief is by getting to the end of this massive proceeding in an enormous hurry now that has not existed for several years.

Maybe there are more highly regulated industries -- I suppose I am engaging in a little hyperbole -- I suppose there are some more highly regulated industries than this one, but this is certainly a highly regulated industry.

THE COURT: Yes, you may continue.

MR. MANEKER: It is not only within the jurisdiction of the Federal Trade Commission, who is watching over it, it is specifically regulated by the Interstate Land Sales Act, and the Department of Housing and Urban Development under it has powers similar to the SEC with

the sale of securities.

I think a fast summary of the Interstate Land Sales Act is that you must put out a prospectus and disclose pretty much as the way you do when you are selling stock, and you are prohibited from engaging in any fraudulent or deceptive practice, and if the office of Interstate Land Sales of the Department of Housing and Urban Affairs were to conclude that they were in fact not disclosing everything that the law required so that it is material and complete, it can, at a moment's notice, suspend this document and we are stopped from selling it. It has done so.

When the complaint by the FTC came out they said that is something that has to be disclosed immediately. You can't sell until you revise this.

If there were some clear public injury going on by deception of the public, that ability on a moment's notice -- I don't think they have to give any notice, I am not sure, it is a very quick proceeding to suspend administratively our ability to sell.

If there were in fact some fraudulent scheme, they have the right to seek injunctive relief. I think it is fair to assume they have been fully aware of what has been going on in the FTC and in this Court over the past

several years. Aside from the instance I have told you of, I don't think there is any other inference where they have sought to exercise those powers on matters concerning which we are concerned.

There is a continuing regulatory flow of communication between the company and that office. If there were need to protect the public during the interim of the stay of the FTC proceeding, this is another power that the Government has unexercised that remains available.

If that were not enough, the Interstate Land Sales Act does not preempt the States, and many States have regulatory statutes and require filings, and we comply with the laws of those States, and we are subject to suspension and injunction in those, and so there is another layer of Governmental authority to protect the public without the need of the full scale administrative hearing on the merits that the FTC is going through.

Finally, your Honor, I don't think we are delaying these people very much in this way: I can't think of any more powerful -- if the object is to stop some fraudulent representation or scheme that is going on, I can't think of any more powerful or, in these circumstances, expeditious way of doing it than the trial in this Court.

If in fact the Government's contentions are

correct and that judgment and conviction results, is there any doubt that that is the strongest possible deterrent for continuing such a scheme and such representations?

Is the cease and desist order from the Federal Trade Commission anything approaching the deterring capacity of a verdict by a jury in this courtroom to that end?

So that we are not really stopping the process by which the conduct and practices of this corporation are being examined and adjudicated, and if they are indeed found wrongful -- what we are saying is you can't go forward with two such processes at the same time, in all fairness, and you have one effective one going forward.

The Commission proceeding is a minimum of eighteen months more, under their compressed trial schedule, and then a decision by the Administrative Law Judge, briefs and decision of the Federal Trade Commission, judicial review by the Court of Appeals. It is not a proceeding geared to giving relief on an urgent basis on an interim basis.

To attempt to squeeze it in before this trial, to get prompt relief, is not what it is designed for. To remedy that defect in the Commission's procedures Congress passed a statute giving them the power to seek injunctive relief.

I think we have shown, and I must say, your Honor, if there are any factual areas I think an evidentiary hearing is required, but I think the time period and the dates and the massive character of the situation show that you cannot prepare this case while you are constantly engaged in, your Honor, first, several months of discovery and then four to six months of actual trial before the FTC; that there would be a full disclosure of defendant's case in a criminal proceeding by virtue of these FTC proceedings;

that there are remedies and remedies for the public interest in the interim which, if there were a need for them, the Commission would have used, and still can use, and that the risk of invalidity, I would say, the certainty of invalidity by permitting the FTC to continue its present force, is not one that can lend itself to this Court.

I am authorized, I understand, to say that there have been enough consultation by the one attorney that I contacted among the individual defendants to say that they wish to join in the motion. I have not had an opportunity to speak to each one.

THE COURT: Who is that?

MR. MANEKER: Mr. Arkin.

May I have thirty seconds to consult with my lawyers to see if I have missed anything?

THE COURT: You may.

[Pause.]

MR. MANEKER: If you have a second thought of hearing me about Cordell, I am urged to talk about it.

THE COURT: All right.

Miss Buchwald.

MS. BUCHWALD: Your Honor, as a member of the Civil Division of the United States Attorney's Office I am here this morning representing the Federal Trade Commission.

Your Honor, before I get into the merits of the particular arguments of which AMREP has made I would like to briefly review the relief that they have requested from your Honor in the context for which that application for relief has been made, because inevitably it seems to me that under the cases your Honor is required to engage in somewhat of a balancing of the various arguments and positions on both sides.

Your Honor, AMREP is seeking here this morning to stay a valid and ongoing administrative proceeding which has been based on a complaint filed in March of 1975, and they are requesting that stay until effectively 1977.

Your Honor, the FTC's complaint was based upon an investigation which began in April of 1973. That complaint charges that AMREP has engaged in unfair and deceptive acts and practices with respect to the sales of land at three subdivisions, apart from the Rio Rancho subdivision, which is the subject of the criminal indictment before your Honor.

That complaint, your Honor, seeks relief on behalf of the public which is not available in a criminal proceeding. It seeks refunds. It seeks reaffirmation of contracts. It seeks to have disclosures made, and it seeks other injunctive relief.

It may be regretable the FTC does not move more quickly, it does not mean that the FTC is not acting, and has not been acting, in the public interest. It certainly seems to me that if we are particularly concerned with the matter of refunds, that the longer the FTC must wait for its relief the less funds there are going to be available for that very real --

THE COURT: You mean the lawyers are going to eat it up?

MS. BUCHWALD: Certainly that happens to be one thing, your Honor, but I am not suggesting for a moment that AMREP does not have the right to defend itself, but the

fact is certainly that the business of AMREP has come under attack in a variety of ways and I suspect it is not quite as good as it used to be.

Your Honor, I will not, in view of your Honor's introductory comment that you believed that there was exhaustion on behalf of --

THE COURT: Hasn't there been?

MS. BUCHWALD: No, sir. AMREP has not even waited for the FTC to rule on its --

THE COURT: How can they, if they are asked to proceed on January 9 and they are going to be told after January 9 what the answer is?

They have exhausted; that's clear. Go on to the next point.

You can't ask any more than that. The cases in the Second Circuit have held that in the criminal field you can't say, "Go ahead and do something that we want you to do and we will let you know later whether you are excused or not." They want to be excused from proceeding today, and if the Administrative Judge can't decide that today, they have exhausted their administrative remedies.

So let's go on to the merits. You can't keep them dangling that. It's ridiculous. Wait until you get out and practice law on the other side, I will have to hear

what you have to say then.

MS. BUCHWALD: Your Honor, I would just like to note that with respect to the factual schedules, both in the criminal matter before your Honor and in the FTC matter, that AMREP agreed to both of those trial dates; that AMREP, after the indictment, agreed on a conference -- and it is in the record -- to a March 1 trial date of the FTC proceeding, and that after that trial date was set, which occurred by the order of October 31 of the FTC, that AMREP then appeared before your Honor and requested the October 5 trial date in the criminal case.

I also would like to note it is obvious that the trials in each case are a year away from the complaint in the indictment in each, and that it is not at all clear that there is any unnecessary conflict between the two of them.

Your Honor, the situation --

THE COURT: One moment. You say that AMREP agreed in October to a March 1976 trial date?

MS. BUCHWALD: March 1, 1976.

THE COURT: Was that before or after the indictment?

MS. BUCHWALD: Two days after the indictment, your Honor.

We have made reference to the specific pages in the hearing in our brief. It is there, sir.

THE COURT: All right.

MS. BUCHWALD: Your Honor, the situation that AMREP finds itself in is not that unusual, it is not uncommon. It is not uncommon for there to be civil and criminal Government enforcement proceedings against the same corporate defendant. The law is, in general, civil proceedings are not stayed in favor of criminal cases.

THE COURT: Unless they interfere with the trial of the criminal case.

MS. BUCHWALD: Which is now how we get directly into the merits and your Honor's jurisdiction under the All Writs Act. If the merits are good perhaps there is jurisdiction. If the merits are bad I think there is a problem on jurisdiction.

THE COURT: I don't have that problem. Stay away from jurisdiction. Whether it is the All Writs Rule or a general supervisory jurisdiction, I have jurisdiction, period.

Let's get to the merits, as to whether you should exercise it as Judge Lumbard framed it in the concluding sentence in Simon.

MS. BUCHWALD: The other day when we appeared

before you we addressed the specific issue which has not been raised this morning that AMREP has no counsel before the FTC.

THE COURT: I am not worried about that. They have adequate counsel before me, completely equipped to handle whatever massiveness is involved in this lawsuit, and if they wish to take on AMREP as a client in the FTC and get more fees from them, that is their problem, that is not my problem.

MS. BUCHWALD: Turning to the question of whether AMREP has had adequate time to prepare both cases, irrespective of who their counsel is, your Honor, all you have before you is a series of exaggerated and conclusary allegations of counsel.

The fact is that AMREP has participated in an investigation before the FTC for two years. It has participated in the investigation of the criminal matter for a year and a half before the indictment. That period of participation in the investigation was also a period of preparation for AMREP. The matters were not surprise to it.

In the course of those investigations it prepared defenses to the cases in its efforts to dissuade the United States Attorney's Office from indicting it,

and I would think the FTC from filing a complaint. In each case, again, we have the full year after the respective complaint and indictment. The trials are not simultaneous, and to the extent that AMREP is correct, that the proceedings are similar, it is clear that the preparation in defense of one is preparation in defense of the other.

Your Honor, this is simply a matter of scheduling, which, it is the position of the FTC, is a matter for each of the respective bodies to conclude on their own.

The next argument, your Honor, is that AMREP does not have, because of the indictment of certain of its individual officers, the opportunity to defend itself before the FTC. As your Honor indicated before, the Supreme Court in Cordell indicated that that is a problem only when there is nobody to represent AMREP before the FTC. The fact is there are officers and directors of AMREP who have not been indicted.

For example, there is the vice president of administration; there is the treasurer; there are the sales directors; there are the managers of the AMREP properties, and there are many officers of their subsidiaries. There are many people available to defendant.

All we have are conclusary allegations that there is nobody to defendant in the FTC proceeding.

THE COURT: I don't think opposing counsel said they had no one. He said the fellows who really knew what was going on were the defendants in the criminal case.

MS. BUCHWALD: I suggest there are probably other people who know what is going on.

The other fact is it is their burden not to come into this Court with conclusary allegations that that is true, but to prove it to your Honor. We cited to your Honor the Finkelstein opinion recently in the Second Circuit which arose in the context of a defendant who sought a severance from the trial of his co-defendant on the grounds that his co-defendant, if the cases were severed, would come into court and testify for him.

The Second Circuit indicated that the conclusary allegations that that would occur are insufficient; you need proof, and the fact is, it seems to me, that the fact that the FTC proceeding is coming ahead of the criminal case, that that is going to deter these officers from testifying. Even if the criminal case is concluded, there are State laws involving land sales, fraud, and it is not at all clear that these people are going to be off the criminal hook, and it is not at all clear that they are ever going to testify before the FTC. So it doesn't seem --

THE COURT: Your opponent has not even gotten

into that and I think properly so. The Fifth Amendment problem is not in here.

He has stated the second prong to that, you see, which is the unfairness of making them prepare there while they are preparing this. That is his point, the unfairness that you will tie the people up in the criminal trial -- this motion is being made in the criminal trial -- that you will tie up AMREP's people through whom they have to operate the corporation, so --

MS. BUCHWALD: Your Honor, I would say --

THE COURT: Pardon me -- so they will not be free to go to the FTC proceedings because of the enormity of what they are facing in the criminal proceeding. That is his point.

MS. BUCHWALD: I don't know how many hours there are in ten months, but there are an awful lot of them --

THE COURT: We sleep some of them, though.

MS. BUCHWALD: We certainly do. I even hope to get some more.

But, your Honor, I suggest to you that it is wholly exaggerated that they really can't prepare. Officers do not remain tied up the same way that lawyers do throughout a proceeding. They will participate to some extent.

THE COURT: I don't think opposing counsel said they had no one. He said the fellows who really knew what was going on were the defendants in the criminal case.

MS. BUCHWALD: I suggest there are probably other people who know what is going on.

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THE COURT: Your opponent has not even gotten

There are many people -- AMREP is a large corporation. They have produced most of the documents which are going to be used as evidence against them; they are going to get from the FTC a complete list of all of the FTC's exhibits. This is not going to be a proceeding that is a surprise to them.

THE COURT: They are going to get that after the FTC completes its direct case, as I have read someplace.

MS. BUCHWALD: No, sir.

THE COURT: They will receive them before March 17, the 29th, or whatever the date is.

MS. BUCHWALD: Yes, sir.

MR. MANEKER: Thirty days before, your Honor.

THE COURT: Then I misread that. I remember reading in one of the papers that I have read --

MR. MANEKER: We are given all of thirty days to do what we can with 150 witnesses.

THE COURT: That is their problem, not mine.

MR. MANEKER: But it just illustrates --

THE COURT: What you have to do with their witnesses, not yours.

MR. MANEKER: It illustrates the intensity of the effort required there, which would not permit time left here -- that is what I am saying.

THE COURT: In relation to what? You are getting the names of Government witnesses.

MR. MANEKER: Getting the names of 150 witnesses.

If I am going to cross-examine those witnesses over three months of hearings, I have to lock myself up with the officers of this corporation and find out what it is they can tell me about --

THE COURT: Don't tell me all the officers of the corporation are going to know something about all 150 witnesses or that all the defendants in the criminal trial are going to know everything about the 150 witnesses.

MR. MANEKER: No. But I think --

THE COURT: And that there are not other people in your organization who were closer to those 150 witnesses than those top people.

MR. MANEKER: I think the Government has given you the answer. They have indicted the people, I assume, that they regard as responsible on these allegations.

THE COURT: But the all knowledgeable.

MR. MANEKER: No. As your Honor said, I am not saying there is absolutely nobody in the corporation who knows anything else, but I also say it is inconceivable that you can do your job in a case of this kind, given the nature of the allegations, the importance of the case,

and given the Government's claim that it is these five top officers who are most heavily involved and responsible, without the most complete access to those five people, and that is an example of the intensity of effort that this compressed schedule -- the FTC is no concern of yours, that's right, except you ought to know how impossible the schedule is and what intensive effort will be required by this corporation and its officers in an attempt to meet it, in judging whether really there is any time left to prepare a massive case in this Court.

THE COURT: You have been working on this case since November 18, as far as I am concerned. As far as I am concerned, Mr. Galentz appeared for AMREP, and he is representing them, and I gather that he has been working diligently on that case, because he told me he needed all the time, sometime in March, when I cut him back to January 23, so most likely he is not doing anything else but this case, and I must assume that, because if he is not, then you are out of court.

MR. MANEKER: Judge, let me assure you that we are ready, willing and able, have the resources to do what we are committed to do in this courtroom, with this great proviso: We cannot do it if we are under --

THE COURT: Wait a second. You have had your

half hour.

Go ahead, please.

MS. BUCHWALD: Your Honor, I think one of the points is who is the "we" here. The "we" is not the Proskauer law firm preparing both cases.

THE COURT: Obviously. The "we" is the AMREP Corporation which can only appear through its officers, agents, et cetera. That is the "we."

MS. BUCHWALD: Yes, your Honor. We agree that, of course, because of the Fifth Amendment those officers cannot be compelled to testify.

THE COURT: Forgetting the Fifth Amendment. He has been smart enough not to talk about the Fifth Amendment, so don't waste your time with it.

MS. BUCHWALD: Under their fiduciary duties to the corporation, they have a right to assist the corporation in its defense of the FTC action and, therefore, that is the weakness with the argument that they are denied the assistance of these officers.

The fact is that AMREP has been defending this case probably since the FTC began its investigation, which was 1973, and certainly should have been defending this case since the FTC filed its complaint in March of this year. If it has not been, the public --

THE COURT: March of last year.

MS. BUCHWALD: Last year, I'm sorry, sir. And if it has not been defending this case, there isn't any reason for the public interest to pay for its willingness or desire not to defend it.

Your Honor, the last argument which was raised this morning was that if the FTC proceeding continued that AMREP will be compelled to reveals its defenses.

I think your Honor is correct, the Cordell opinion, as well as the Simon case, the American Radiator decision in the Third Circuit, your Honor, I think have disposed of that, and that is just an inevitable problem that a corporation operates under, and there is nothing constitutionally infirmed with that.

I apologize for having neglected to give to the Proskauer firm earlier an affidavit which we would like to submit. It is only to submit to the Court a true copy of the January 2nd order which is now also part of AMREP's papers, and also the notice of appearance which AMREP filed on April 1, 1975, which listed three attorneys -- two apart from Mr. Friend -- which we would just like to submit to the Court to have as part of the record of this case.

MR. MANEKER: I have no objection to the submission of the document. I don't think this is the time

to submit affidavits.

MS. BUCHWALD: The affidavit, your Honor, only attests that the documents are true and accurate. It does not make any argument. Excuse me, your Honor, --

THE COURT: Just a second. I have a reply brief here. I assume you received a copy?

MS. BUCHWALD: I received that at 7:20 last night, your Honor.

I believe that Mr. Morris, with your Honor's permission,would like to address the Court.

THE COURT: Yes, go ahead, Mr. Morris.

MR. MORRIS: Good morning, your Honor. My name is D. Barry Morris. I am with the office of general counsel of the Federal Trade Commission. I will be brief.

THE COURT: Yes.

MR. MORRIS: We were very adequately represented by the U. S. Attorney's Office.

I would like to point out to your Honor that AMREP has two motions before the Administrative Law Judge. One was for a stay of discovery pending the determination by the Administrative Law Judge of the main motion. I realize that time has expired on that because today is January 9 and they were supposed to have complied with discovery requirements by today. However,there is another

motion before the Administrative Law Judge to stay the entire FTC proceeding pending the conclusion of the criminal trial.

The Administrative Law Judge has not yet ruled on that. He may rule in AMREP's favor and, your Honor, I realize what you said earlier about exhaustion, but we submit that AMREP is in this Court prematurely. We don't know what the Administrative Law Judge will do. If the Administrative Law Judge denies AMREP's motion they then have the opportunity, pursuant to the FTC rules, to go before the Commission.

THE COURT: But they are under a directive to continue production.

MR. MORRIS: Yes, your Honor, but with respect to the main motion --

THE COURT: That is all part of one, as I see it. They say, "As long as you keep me tied up in the FTC then you are interfering with my preparation for the criminal trial." Whether that is in conjunction with the production of the January 9 documents or whether it is in conjunction with the putting over of the entire FTC proceeding really makes no difference. Once you make them move, and they have to start to do it, they say you are interfering with their right to a fair trial here.

MR. MORRIS: I would just like to point out, your Honor, that their papers indicate that they are to commence complying with the discovery request January the 9. They are not commencing January the 9. They are continuing January the 9. There has been discovery all along --

THE COURT: But that was long before I set a date in the criminal trial, wasn't it?

MR. MORRIS: Before the indictment.

THE COURT: Sure. Nothing has happened actually in the way of proceedings on their part between the indictment and the directive to produce on January 9. Nothing was happening until they were told to produce on January 9.

MR. MORRIS: In addition, your Honor, I would just like to point out that the FTC is charged by Congress to enforce the Federal Trade Commission Act and to protect the consuming public against unfair or deceptive acts or practices.

In addition, Congress recently gave the FTC power to ask for consumer redress by way of restitution and the like.

In March of last year the FTC issued its complaint. There has been much progress towards trial. A significant amount of discovery has already taken place and the trial is scheduled to commence March 29, approximately

six months prior to the start of the criminal trial. We certainly recognize the great importance of the criminal proceeding. We respectfully submit, however, that Congress also intended protection of the public through an undelayed enforcement of the Federal Trade Commission Act.

If the FTC proceeding were to be stayed, it could not begin until possibly the summer or the fall of 1977, a year and a half from now.

We submit that there is not such a conflict with the criminal proceeding at this time that would warrant such a delay in the administrative proceeding.

THE COURT: I am worried about, frankly, forcing the defendants to proceed in September and October. I am not persuaded by the generosity of the Commission by saying if the defense has not completed its presentation to the FTC, the FTC will suspend its hearing while the criminal trial goes on.

MR. MORRIS: Your Honor, we submit that if there is a problem in September or October of 1976, that is the time for AMREP to come before the Administrative Law Judge, and if they are not satisfied by the ALJ, to then come before your Honor.

We submit that now is not the time, that the conflict to which the Courts address themselves when they

say that a criminal judge has jurisdiction over an administrative proceeding, that conflict has not yet arisen.

We submit we are maybe five or six months premature and maybe the conflict won't arise.

THE COURT: Mr. Morris, you are addressing yourself to the exercise of my discretion, not whether they have the right to come. The question is whether they are really going to win, isn't that the issue?

MR. MORRIS: Yes. I would just like to point out that it might very well be that -- if the FTC proceeding started on time in March, it might very well be that it would be entirely concluded in September sometime.

THE COURT: That is really tight. I am told it is a massive case, by the United States Attorney. She needed seven weeks to answer defendants' motion. It was going to be such a huge motion, she didn't know what the motion was going to be, but she said she needed seven weeks to answer it. I was ready to try this case April 1, but if I can't get answering papers until March 15, which I gather are going to be voluminous, in reply to a voluminous motion, within two weeks, I could not possibly regard that great motion, and if I decided it and ordered some production or all production, production would have to start. Then the defendants would have to digest it, then they would have

to get ready for trial -- all within the space of two weeks, in which event I said, "Let's put it off because obviously this case could not possibly start practically until sometime in May, at which time, with a three or four-month trial scheduled, you would have to tell the jurors that they would lose their summer vacation if they sat on this trial because the trial would go through July and August," and that's why I put it off until October 6th. I was ready April 1.

I have a six-week SEC criminal trial starting February 12 and whenever that ends I will start this case the following day. But I was pleaded with that it could not be done. That is why we are in the box we are in now.

If you did that then you would never have your trial.

MR. MORRIS: I would just like to end with this, if the FTC complaint affords protection to the consuming public of a different nature than the criminal proceeding, and I respectfully submit to your Honor that the FTC proceeding should be allowed to go first.

THE COURT: Let me ask you this, Mr. Morris, what are you asking for in the FTC? When you complete your proceeding what can the Commission do? What is it seeking to do against AMREP?

MR. MORRIS: We would get a cease and desist order which would require AMREP to make certain disclosures so that prospective purchasers of this land would know exactly what they are getting into.

It would give prospective purchasers a chance to rescind the contract after they signed it. It is a cooling off period. It gives them --

THE COURT: You mean after you have entered your order you can say that from this time on anyone who buys or enters into a contract to purchase may then rescind within a certain period of time, is that what you mean?

MR. MORRIS: Yes. I believe the Land Sale Act now permits purchasers a certain amount of time, and the FTC order, I believe, would go a little further and give them, I think instead of three days, give them seven days to change their mind.

In addition, something that is very important is that the FTC now has been given by Congress a year ago the right to ask for consumer redress for defrauded purchasers to get their money back.

This is something that the FTC has every intention, after the cease and desist order becomes final, to apply to the Court --

THE COURT: This is what I am interested in.

I am not interested in what the FTC will do as far as future practices are concerned, because if that is important, I gather you could get that today with the preliminary injunction, if you so advised.

MR. MORRIS: Yes.

THE COURT: I am interested really in what can happen to people who have already bought and been defrauded, because there you have the problem of the attorneys using up the assets and legal fees and nothing left to go back to the purchasers.

So you can now get consumer redress with restitution, right?

MR. MORRIS: Yes.

THE COURT: And that would be an object of this proceeding that you are engaged in?

MR. MORRIS: Absolutely, your Honor. I don't know the reason why the FTC did not go for an injunction before. It has limited resources and it decides the best way to use those limited resources. But your Honor pointed out a good reason why it may not have, because in order to get consumer redress, according to 613(b) of the FTC Act, it can only -- it's not 13, 19, I'm sorry, of the FTC Act -- it can only get that consumer redress after a final cease and desist order has been entered. It would not be able

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This is something that the FTC has every intention, after the cease and desist order becomes final, to apply to the Court --

THE COURT: This is what I am interested in.

to get it after the injunction.

THE COURT: True. You could go over, if a man asked for a preliminary injunction regarding the future conduct by AMREP, but you could not get relief for people who have already been damaged until you complete the proceedings.

MR. MORRIS: That's right, your Honor.

THE COURT: So one half of what you are seeking possibly could be achieved through a preliminary injunction. All right.

MR. MORRIS: Thank you, your Honor.

THE COURT: Do you want a few minutes to reply?

MR. MANEKER: May I, your Honor?

THE COURT: Go ahead.

MR. MANEKER: I want to particularly respond to this.

It is not one half. Their injunctive relief can cover both halves, and this half --

THE COURT: How can the injunctive relief direct AMREP to repay monies to purchasers?

MR. MANEKER: It can go this far, your Honor, and this was the point of that press conference statement that I referred to before -- their concern was restitution, and when Mr. Thomas Rouse, director of the Bureau of

Consumer Protection, was asked, "Are you going to seek preliminary injunction?" He said AMREP has a net worth of $46,000,000, which was enough to support a substantial restitution ruling, and that he would not seek injunctive relief unless and until AMREP began to dissipate its resources.

By the way, I am reading but not quoting. This is something from our brief.

This is the consideration, the problem raised that the FTC considered back in March, almost a year ago when it issued this. It was asked in this press conference because of the interest in then new remedy restitution, and it said, we are satisfied the net worth is there to satisfy restitution claims. If we see evidence it is being dissipated, then that is another story.

I am obviously concerned about your constant elusions to dissipation, but aside from that, if there was some evidence of dissipation, we are a public company, we put out quarterly reports, we don't do anything secret, Mr. Rouse obviously reads them, and if there were evidence of dissipation and this were his concern, he would have been in court before now, and if there is evidence in the future, he would come in in the future.

THE COURT: What else do you want to say?

bssr

MR. MANEKER: One factual thing, your Honor. I noticed your Honor being concerned with the claim that we agreed to the trial date. I have to take a few moments on that.

For that purpose, I do have to get into the indictment of Mr. Friend, who was functioning as chief counsel in the FTC proceeding. Mr. Friend was vice president and general counsel of AMREP when the investigation started. Because he had been a private practitioner, I understand, and a litigator for many years --

THE COURT: He litigated Cordell.

MR. MANEKER: He did.

THE COURT: I learned that from reading the decision.

MR. MANEKER: I wish you would let me talk about it still.

THE COURT: No, sir.

MR. MANEKER: He was a litigator, yes, and as you will note in there, he represented people in fraud cases and he represented people before the FTC, and there was apparently an obvious marriage that when this investigation started the corporation, instead of seeking chief counsel outside its own officers, had a man particularly apt to do it and Mr. Friend assumed the responsibility for

the defense during the entire investigative proceedings, and after the formal investigative proceedings ended in March '75, when the complaint came out, he assumed the defense there.

He was assisted, of course -- you don't try one of these cases alone -- he was assisted, of course, by people in the legal department of AMREP, attorneys employed in the house, if you will, who appeared with him on the notice of appearance that has been submitted to you. There is no question who was the boss.

In the FTC's brief, which we submit to you, they acknowledge that Mr. Friend was the chief corporate spokesman. There is no question that Mr. Friend was responsible, and as I do, he has assistants.

Mr. Friend was indicted on October 28th --

THE COURT: He knew he was a target for the investigation from the beginning -- not from the very beginning, but early, certainly when he was brought before the Grand Jury and he testified --

MR, MANEKER: I don't have that date at hand. He knew, certainly.

THE COURT: He knew he was a target.

MR. MANEKER: I am not sure what significance your Honor draws from it, but, in any event --

THE COURT: He was not a lawyer uninvolved in what was going on, aside from representing a client. He was personally involved, certainly from the point of time when he was advised that he was a target.

MR. MANEKER: I agree. I don't happen to know that point in time offhand so I don't know what the significance is that you ascribe to it, but be that as it may, undoubtedly of record somehow, somewhere, on October 28th he was indicted.

On October 30, what, 48 hours later, there was a previously scheduled pretrial conference at the FTC case. I am not suggesting it was scheduled, you know, it was an accident of dates.

In the emergency, there was no time to go out and -- Mr. Friend can obviously no longer act -- in 48 hours there was no time to retain counsel. One of his assistants goes down and appropriately starts off by announcing that Mr. Friend is indicted, and he tells the Administrative Law Judge, "I don't know where I am going to be going." And he begins to ask for an adjournment. He says, "Originally we asked for a delay in this pending criminal case," referring to these motions, and the Law Judge cuts him off and says, "Yes, I decided that and the Commission sustained me." And he goes on and says, "No,

we went to Court, too, and that is pending." The Law Judge says, "Look, I haven't been enjoined yet." And in effect, "Don't worry about it. We are not going to do anything immediate to you today."

THE COURT: You may continue.

MR. MANEKER: On that basis, Mr. Schirra, the lawyer who went down, I suppose had two options, he could have gotten up and walked out of the room or he could have gone ahead.

By the way, it is just that problem that they are still in in the FTC because I wouldn't take that case on with that trial schedule that has been set down there in an attempt to get it in before October, and they have not been able to find any other law firm that says they could meet any such scheduling. So they are without counsel there.

In the course of that proceeding, Mr. Schirra made certain objections and he did make certain agreements. He consented -- and it is true that the March 1 date was proposed, and he said okay.

I submit it was an imposition to go ahead 48 hours after the indictment of his chief counsel without calling to the Administrative Law Judge's attention at the beginning of the hearing that fact, and he should have stopped

right there when a lawyer says, "I don't know where I am going," to you and says, "We are asking for a delay here because of this criminal case." It is that very kind of imposition that will continue to occur there, and it is another reason why that proceeding cannot be validly scheduled.

But to come in here and say, on an occasion 48 hours after the indictment of counsel, that there is a commitment which is used to impeach the claims we are making before you now, I don't think is a fair inference.

I think I will stop here.

THE COURT: Mr. Morris, will you educate me. There is a date of March 1973. What is the significance of the March 1973 date?

MR. MANEKER: April '73, your Honor.

MR. MORRIS: Your Honor, I believe that is --

THE COURT: April. I'm sorry.

MR. MORRIS: That is when the formal investigation began.

THE COURT: How was that instituted, Mr. Morris, was it done by a document, an order of somebody?

MR. MORRIS: It is normally done by a Commission resolution.

THE COURT: All right. Then I have a date of

March of 1975. What is the significance of that?

MR. MORRIS: March 11, 1975 is when the Commission issued its complaint.

THE COURT: I gather that is when the Commission issued its complaint as a result of what the investigation produced between April of 1973 and March of '75; is that correct?

MR. MORRIS: Yes, your Honor. Before the Commission issues a complaint it has to have reason to believe that there have been violations.

THE COURT: I see. Then after the Commission issues its complaint, what is the next step that is required? I assume the answer.

MR. MORRIS: There is an answer filed and an answer was filed by AMREP.

THE COURT: Do you have the date?

MS. BUCHWALD: I know it is an exhibit in the papers that were before Judge Pierce, and if your Honor would like a date I would be happy to phone it down into chambers.

THE COURT: I have a copy here.

MS. BUCHWALD: I think it is Exhibit 2 to the Pierce papers, not the duplicate set, the first set of Pierce papers.

THE COURT: All right. Then I can assume the usual proceeding of depositions, discovery is followed.

MR. MORRIS: Yes.

MR. MANEKER: No, your Honor. If you have interest in it, it ought to be explained. This was unusual.

THE COURT: What was unusual?

MR. MANEKER: As I said before, the investigation just stopped dead for nine months before the issuance of the complaint.

To the best we know, nothing was done. There was an investigative subpoena still outstanding which AMREP had moved to quash because of the pending Grand Jury proceeding.

The FTC then decided to withdraw that investigative subpoena so it could issue a complaint. It issued a complaint and it -- it issued a complaint and all that happened is that the investigation went on. A new subpoena duces tecum, equally massive, came out and that proceeding has been tied up by just continued discovery by the Commission ever since. In other words, your Honor, what you have had here is for almost three years, April '73, and it is now January '76, despite the fact that a complaint came down, and with a nine-month hiatus in which they did nothing, there has been continuous discovery by the

Commission. Attempts by the respondent to get discovery were deferred. "We will give you yours when we are through." We have gotten none to this date. The first was to be that witness and exhibit lists which we are to get thirty days from the commencement of the case.

THE COURT: Isn't that normal practice, that they don't give you anything till they have got you in the corner?

MR. MANEKER: I am not competent to just say what is normal there, your Honor. It is why I emphasize, in contradiction to what has been alleged here, that we have been preparing this case for two or three years -- we have been discovered for two or three years and it now comes time, or it would have come, for us to prepare now that we have an indictment, and presumably in the FTC proceeding when we get some discovery.

THE COURT: Pursuant to the rules, I will extend my temporary restraining order for ten days.

MR. MANEKER: Thank you, your Honor.

[Time noted: 11:40 a.m.]

- - -

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMREP CORP.,

Plaintiff,

-against-

FEDERAL TRADE COMMISSION,

Defendant.

75 Civ. 4013 (LWP)

NOTICE OF APPEAL

Notice is hereby given that plaintiff Amrep Corporation hereby appeals to the United States Court of Appeals for the Second Circuit from the order, dated January 7, 1976 and entered in this action on January 9, 1976, denying the motion of the plaintiff, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to vacate the District Court's order, dated November 3, 1975 and entered in this action on November 7, 1975, dismissing the complaint and denying a preliminary injunction on the ground that the action is moot and from each and every part thereof.

Dated: New York, New York
January 14, 1976

PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, New York 10022

By Morton M. Maneker
Morton M. Maneker

Theodore R. Schreier
Theodore R. Schreier, Esq.
Amrep Corporation
16 West 61st Street
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Attorneys for Plaintiff

CONTAINED IN THE FEDERAL INDICTMENT

TO:

Thomas J. Cahill
United States Attorney
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By: Naomi Buchwald
Assistant United States
Attorney

Barry Morris, Esq.
Office of the General Counsel
Federal Trade Commission
Washington, D.C. 20580

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

-against- :

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORP., HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, and DANIEL FRIEDMAN, : 75 Cr. 1023 (CMM)

Defendants. :

- x

A P P E A R A N C E S

THOMAS J. CAHILL
United States Attorney for the
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For the United States of America
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Morton M. Maneker, Of Counsel

METZNER, D. J.:

Amrep Corporation (Amrep), a defendant in this criminal proceeding, moves for a stay of all proceedings presently pending against it before the Federal Trade Commission (the Commission).

The indictment names seven individual and three corporate defendants and charges, in essence, a conspiracy to defraud purchasers of lots in Rio Rancho Estates in an amount exceeding $200,000,000. It consists of 42 pages alleging 70 violations of the mail fraud statute (18 U.S.C. § 1341), and ten counts of violation of the Interstate Land Sales Full Disclosure Act (15 U.S.C. § 1703).

Amrep is also the subject of a complaint filed by the Commission based on the same and similar acts. The Commission commenced its investigation in April 1973. In March 1975 it issued a complaint against Amrep seeking extensive relief in the form of a detailed cease and desist order and contemplating massive restitution to allegedly defrauded purchasers.

In March 1974 the United States Attorney instituted a grand jury investigation and the instant indictment was filed on October 28, 1975, to which all

the defendants pleaded not guilty on November 10, 1975.

Between the issuance of the Commission's complaint and the filing of the indictment, the Commission had been proceeding with discovery of Amrep. On October 30, two days after the filing of the indictment, a conference was held with the administrative law judge for the purpose of setting a trial schedule of the Commission's complaint. Although the administrative law judge was informed of the filing of the indictment, he proceeded to schedule, by order dated October 31, the following pretrial and trial proceedings: (1) By November 28, Amrep was to have supplied the Commission with additional document production in order to fully comply with a government subpoena duces tecum. (2) The Commission's case-in-chief was to begin February 17, 1976. (It was adduced at the hearing of October 30 that the Commission's case would last at least some thirteen weeks, taking place in seven different cities.) (3) Amrep's defense was to commence six weeks after the close of the case-in-chief.

On November 18, 1975, eight days after the defendants had pleaded to the indictment, this court held a pretrial conference. It was not advised at the time of the pendency of the Commission's proceedings. The court

announced that it was ready to proceed with the trial of this case as soon as it finished a six-weeks SEC criminal fraud case in the middle of March of this year. At the conference the conclusion was reached, both from the remarks of counsel for the government and the six counsel representing various defendants, that the pretrial motions could not be finally submitted to the court until March 15. A great deal of discovery was going to be involved since many thousands of documents had been brought before the grand jury which had considered the matter for 18 months. It also became apparent that the case would take three to four months to try. Allowing sufficient time for the disposition of the motions, which the government opined would be complicated, and whatever discovery would be permitted, it was obvious that the trial could not commence much before the middle of May. Such a schedule would require the court to inform prospective jurors that they could not expect a vacation during the summer of 1976 since they would be engaged in this trial during the months of July and August. The time necessary to empanel twelve jurors and six alternates would have been inordinately long under the circumstances. As a result, the court set

the case down for trial on October 5, 1976. At the same time, it fixed January 23 as the date for filing all motions by the defendants and acceded to the government's request that it have until March 15 to answer the motions.

Amrep had been represented by its general counsel in the Commission proceedings. However, when he was named as a defendant in the indictment, Amrep retained new counsel in those proceedings, which was the same firm of attorneys which it had chosen to represent it against the charges in the indictment. Counsel then requested a one-month extension of the schedule previously set for the Commission proceedings.

By order of December 2, 1975, the administrative law judge amended the order of October 31 by ruling, inter alia, that the additional production required of Amrep now would commence on January 9, 1976, that 864 requests to Amrep for admissions served on November 12, 1975 would be answered by January 16, 1976, and that the government's case-in-chief would commence on March 29, 1976. The order also provided that Amrep could move to stay all Commission proceedings by December 19, 1975, in view of its representations of conflict between those proceedings and the trial schedule in the criminal action.

Amrep made the motion for a stay on December 19, claiming that its principal officers through whom it would appear in the Commission's proceedings would be tied up in preparing their defense to the criminal charges. Amrep also requested an immediate stay of the production scheduled for January 9. The administrative law judge responded on December 29 by directing that the discovery schedule would be adhered to and that either on January 9, or shortly thereafter, he would pass upon the application for a stay. Amrep decided at that time to seek relief from the Commission's order by this motion.

At the outset, the Commission argues that this court lacks jurisdiction to interfere with its proceedings. I think it is perfectly clear that the court does have jurisdiction to prevent interference with the trial of the pending indictment or with the preparation by defendants for such trial. United States v. Simon, 373 F.2d 649 (2d Cir.), vacated on other grounds, 389 U.S. 425 (1967); United States v. Birrell, 276 F. Supp. 798 (S.D.N.Y. 1967).

I also hold that Amrep has exhausted its administrative remedies. The full Commission on a previous application had denied a stay of the proceedings, knowing

2. Priority in time. It is an ancient maxim of

of the criminal investigation then in progress, and it would appear to be a futile gesture to compel Amrep to go through the same application a second time. Sohm v. Fowler, 365 F.2d 915 (D.C. Cir. 1966); cf. Bannercraft Clothing Co. v. Renegotiation Board, 466 F.2d 345 (2d Cir. 1972). Secondly, the administrative law judge had directed that Amrep proceed with its production of documents on January 9, and that some time, either on that day or later on, he would make his ruling as to staying the proceedings. It was to prevent the commencement of the discovery proceedings that the application for a stay to the administrative law judge was initiated. Since he indicated he would not rule at least until production of documents had commenced, Amrep should not be prevented from obtaining a ruling on the fundamental question before it was called upon to comply with the order of the administrative law judge.

Consequently, the issue to be decided here is whether Amrep has made sufficient showing that the schedule of the proceedings before the Commission will interfere with the trial of the indictment or the preparation of its defenses. The burden on the issue rests upon Amrep.

Since Amrep is a corporation, its defenses will be presented through its principal officers, directors and general counsel, all of whom are named as defendants in the indictment.

On the oral argument, Amrep spelled out three reasons why its application should be granted. First, it argued that a fair trial of the criminal charges could not be had if, during the entire period, the corporation and its officers are forced to be involved in the Commission proceedings. Second, it argued that a fair trial cannot be afforded Amrep because the Commission proceedings will in effect afford the government pretrial discovery to which it is not entitled by the rules of criminal procedure and for which Amrep does not have reciprocal rights. Third, it contended that the Commission proceedings will not be jeopardized by an adjournment until after the completion of the criminal trial.

As stated above, the defendants must file all pretrial motions in the criminal proceeding within ten days from now. Counsel have been working on those motions for nearly two months and I cannot conceive that all of the individual defendants are going to be so tied up in

the next two weeks that they cannot comply with the directives in the Commission proceedings during that period, especially in view of the adjournments of the existing dates which will have to be granted because of the temporary stay ordered by this court. After the defendants' motions are filed, there will be seven weeks in which day-to-day work will not be necessary awaiting the government's answers, and several weeks thereafter awaiting decision on those motions and such discovery as the court may permit. Thus, there is no substantial conflict through the first month of the projected trial schedule of the government's case-in-chief before the administrative law judge.

While a large number of witnesses have been designated to be called by the government in the Commission proceeding, the aid of all of the individual defendants will not be necessary to prepare the cross examination of such witnesses.

Consequently, I see no reason to interfere with the schedule set up by the administrative law judge through the completion of the government's case-in chief, assuming that it ends on schedule or shortly thereafter.

What does concern me, however, is the involvement of the individual defendants in the preparation and presentation of Amrep's defense in the Commission proceedings during the months of August, September and October, as the criminal trial is scheduled to start on October 5. Those will be the months when Amrep will require them to be intimately involved with counsel in the preparation of its defense of the criminal charges.

Therefore, I direct that the Commission proceedings may continue with the presentation of the government's case-in-chief through July 30, 1976. All proceedings thereafter are stayed until one month after the entry of the jury's verdict in the criminal trial.

The Commission's investigation started in April 1973, but nothing appears to have been done for nine months prior to the filing of the complaint in March 1975. This order will result in a delay of several months in the completion of the Commission proceedings, but that does not seem to be prejudicial in view of the time that the matter has taken to date. The Commission, if it is of the opinion that it would be prejudiced by an adjournment, can apply for a preliminary injunction

against Amrep to cease whatever practices the Commission seeks to enjoin in the proceedings.

The adjournment also avoids, in the main, the divulging of Amrep's position in the criminal case through indirect pretrial discovery by the government. While this results from the order, I add that it is not a basis for the ruling on this motion. But see Silver v. McCamey, 221 F.2d 873 (D.C. Cir. 1955).

So ordered.

Dated: New York, N. Y.
January 15, 1976

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	
- v -	75 Cr. 1023 (CMM)
AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORP., HOWARD W. FRIEDMAN, CHESTER CARITY, IRVING W. BLUM, HENRY L. HOFFMAN, HERMAN B. OBERMAN, SOLOMON H. FRIEND, and DANIEL FRIEDMAN,	NOTICE OF APPEAL
Defendants.	

Notice is hereby given that defendant Amrep Corporation hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the order entered herein on January 15, 1976, as denied, in part, the motion of such defendant to enjoin all proceedings in the Matter of Amrep Corporation, presently pending before the Federal Trade Commission (Docket No. 9018), until the conclusion of the trial herein.

Dated: New York, New York
January 20, 1976

PROSKAUER ROSE GOETZ & MENDELSOHN
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COMPARISON OF THE ALLEGATIONS CONTAINED IN THE FEDERAL INDICTMENT AND THE FTC COMPLAINT

Complaint	Indictment
Amrep caused advertisements, promotional materials, contracts and various business papers to be transmitted through the U.S. mails. (¶5)	Amrep and its co-defendants caused invitations to dinner, advertisements, and other materials to be placed in the mails and delivered U.S. Postal Service (¶¶18(g)(ii), 19)
Amrep invited prospective purchasers to dinner parties and offered goods and services free or at a low cost, representing that its purpose was to inform people of the land situation in general, although its real purpose was to induce these potential purchasers to sign contracts for Amrep land. (¶¶ 9 & 10)	Amrep and its co-defendants invited potential purchasers to free dinners during which sales presentations were made that were designed to induce these potential purchasers to sign contracts for land. (¶ 18(g))
In its advertisements, promotional materials, sales presentations, movies and slides, Amrep made representations concerning land as an investment, stock market, banks and insurance, population growth and movement. (¶11).	In its written promotional material, oral sales representations, photographs, slides and movie films, Amrep made representations that investment in its land would yield a higher return than investments in stocks, bonds, insurance, pension funds or savings accounts. (¶18(j))
Through its statements and representations Amrep represented that the lots it was selling were an excellent investment, that significant monetary gain would be achieved by purchasing such lots and that there was little or no financial risk involved in the purchase of these lots. (¶ 11)	Amrep represented that purchases of its land were safe and secure financial investments that would appreciate rapidly and greatly in market value, and that they were sound, virtually risk-free financial investments. (¶¶ 14 & 15
Amrep represented that the resale of any lots purchased from it would not be difficult. (¶13)	Amrep represented that its lots would be easily resalable and certain to appreciate in resale market price. (¶ 15)
Amrep represented that the growth of land values in its subdivisions corresponded with the growth of land values in certain other geographical areas. (¶ 18)	Amrep and its co-defendants represented that land values in the vicinity of its subdivision, Rio Rancho Estates, have consistently risen in value and that the area was characterized by a prolonged rise in real estate values. (¶ 18(h)(i))

Complaint	Indictment
Amrep's promotional materials and advertisements conveyed the impression that the only direction in which the city of Albuquerque, New Mexico could expand was toward Rio Rancho Estates and that the value of undeveloped land at Rio Rancho Estates would inevitably increase as a result of such growth. (¶ 20)	Amrep and its co-defendants represented that Rio Rancho Estates was directly in the path of Albuquerque's growth and that the city could only grow to and through Rio Rancho Estates. They further represented that because building land in and around Albuquerque was scarce there would inevitably be a brisk resale market for lots at Rio Rancho Estates and a rapid increase in the price of such land. (¶ 15)
Amrep represented that its subdivisions would be developed at least to the extent that all or most lots would be usable as home sites, with potable water, septic tanks or central sewage, electricity and telephone service, available without extraordinary charges for hook-up to said utilities. (¶ 24)	Amrep and its co-defendants represented that the lots that it sold were suitable for home sites and that the prices for those lots included water, utilities and other customary amenities. (¶ 18(o))
Amrep represented that land in its subdivisions, particularly that in a desirable or choice location, soon would be unavailable and that prospective purchasers therefor had to make their purchases immediately or risk being unable to do so. (¶ 28 and 30)	Amrep and its co-defendants caused their salesmen to represent that certain home sites were located in choice areas and that these areas would be sold out immediately, thereby encouraging potential purchasers to make their purchases quickly. (¶ 18(g)(ix)(x)(xi))
Amrep represented that its exchange privilege, pursuant to which purchasers could exchange land in undeveloped areas for land in building areas, would involve the exchange of lots of equal size. (¶ 44 and 45)	Amrep and its co-defendants failed to disclose that the exchange privilege usually resulted in a purchaser receiving a smaller piece of land in the building area than he had owned in the undeveloped area. (¶ 18(o)(xvi))
Amrep discouraged potential purchasers from obtaining the assistance of counsel or other professional advice before signing a sales contract. (¶47)	Amrep discouraged potential purchasers from consulting with lawyers or knowledgable financial advisors before signing sales contracts. (¶ 18(g)(viii))

POSITIONS IN AMEP HELD BY
INDIVIDUAL INDICTEES SINCE 1962

	BLUM	CARITY	D. FRIEDMAN	H. FRIEDMAN	FRIEND	HOFFMAN	OBERMAN
1962	President Director	Vice President, Treasurer Director		Sec,Comptroller Director		Vice President Director	Director
1963	President Director	Vice President, Treasurer Director		Sec, Comptroller Director		Vice President Director	
1964	President Director	Vice President, Treasurer Director		Sec, Comptroller Director		Vice President Director	
1965	President Director	Vice President, Treasurer Director		Sec, Comptroller Director		Vice President Director	
1966	President Director	Vice President Director		Sec, Treasurer Director		Vice President Director	
1967	President Director	Vice President Director		Sec, Treasurer Director		Vice President Director	
1968	Board Chairman Director	Exec Vice President Director	Treasurer	President Director		Senior Vice President Director	
1969	Board Chairman Director	Exec Vice President Director	Treasurer	President Director		Senior Vice President Director	
1970	Board Chairman	Exec Vice President		President		Senior Vice President Director	
1971	Board Chairman	Exec Vice President	Vice President	President Board President	Vice President, General Counsel, Director	Senior Vice President Director	
1972	Board Chairman	Exec Vice President	Vice President Director	President Board President	Vice President, General Counsel, Director	Senior Vice President Director	
1973	Board Chairman	Exec Vice President	Senior Vice President, Sales Director	President Board President	Vice President, General Counsel, Director	Senior Vice President Director	
1974	Board Chairman	Exec Vice President	Senior Vice President, Sales Director	President Board President	Vice President, General Counsel, Director	Senior Vice President Director	
1975	Board Chairman	Exec Vice President	Senior Vice President, Sales	President Board President	Vice President, General Counsel,	Consultant	

Individual attorneys (Mesers. Gallantz and Mankerl) in

ALTHOUGH THE FOLLOWING PORTION OF THE APPENDIX IS NOT A PART OF THE RECORD BELOW, IT IS INCLUDED SO THAT THE COURT MAY BE APPRISED OF DEVELOPMENTS IN THE FEDERAL TRADE COMMISSION PROCEEDING SUBSEQUENT TO THE RENDERING OF THE DECISIONS FROM WHICH THIS APPEAL IS TAKEN.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation	DOCKET NO. 9018

DISPOSITION OF RESPONDENT'S MOTION TO STAY THIS PROCEEDING PENDING TRIAL OF A RELATED CRIMINAL CASE, ETC.

This is a complaint challenging vast real estate sales promotions as deceptive under Section 5 of the Federal Trade Commission Act. The complaint looks to recover many millions of dollars for land buyers allegedly misled by the promoter and sole respondent here, Amrep Corporation ("Amrep") and to prevent recurrence of such deceptive practices in the future. Respondent Amrep has moved to stay this proceeding, probably for a year or more, principally because of its simultaneous involvement in a criminal fraud case in the Southern District of New York, arising out of a part of the same facts which gave rise to this complaint.

Background Of Motion. Substantially similar motions have previously been denied. Even before this complaint issued, on 6/11/74 respondent moved unsuccessfully to stay either the grand jury's or the Commission's investigation. That motion was dismissed as moot by the Commission when it issued its complaint on 3/11/75. Thereafter but before indictment of the corporation and several of its officers for fraud in the Southern District of New York on 10/28/75, respondent again moved for a stay on similar grounds. This second attempt, however, was denied by Chief Judge Hanscom on 6/27/75 and his ruling was sustained by the Commission on 7/29/75. A suit with the same object was then brought by Amrep in the Southern District of New York but was dismissed as moot on 11/3/75 after the grand jury brought in its indictment.

On 12/19/75 new counsel, appearing "specially" for respondent, made the present motion for an indefinite stay of this case, stressing the fact of recent indictment to show altered circumstances but also re-plowing much of the same ground involved in the earlier efforts to get a stay. "Special counsel" further urges a stay, with or without reference to the contemporaneous criminal case, on the ground that he has only recently been employed to replace one of respondent's several counsel who was indicted with his clients in the New York case and lacks time to prepare respondent's defense before Fall, even though he was in fact given a month, as he originally requested, to familiarize himself with this case.

On 12/29/75 a temporary stay of continuing discovery, pending this decision, was denied by the Administrative Law Judge. When the Commission on 1/2/76 refused to accept an interlocutory appeal therefrom because of failure to follow the procedure required by Rule §3.23(b), "special counsel" for respondent then unsuccessfully sought relief from Pierce, J. in the Southern District of New York and failing that from Metzner, J. in the same district. The latter on 1/6/76 granted a temporary restraining order staying further discovery here for three days and on 1/9/76 extended the temporary restraining order for 10 more days, pending a hearing on the merits of a long-term stay.

As things now stand, this complaint will go to trial on 3/29/76. It is estimated that the prosecution's case may require up to 3 months and Chief Judge Hanscom promised respondent 1 1/2 months thereafter within which to complete its discovery and turn its defensive evidence over to complaint counsel. It is further estimated, although with obvious uncertainty, that respondent's presentation of its defense may take another 2 months. The end of respondent's defense presentation and, of course, any rebuttal evidence by complaint counsel may thus overlap slightly the start of the criminal case in New York, which has been scheduled by Metzner, J. for 10/5/76. Respondent now seeks to stay trial of this proceeding until after the criminal case is fully tried, which would presumably be sometime in 1977.

Factors Affecting Grant Or Denial Of A Stay. The question when, if ever, a civil litigation should be stayed pending completion of a concurrent criminal litigation arising out of substantially the same facts is "never

without difficulty". Gordon v. FDIC, 427 F.2d 578, 579 (D.C. Cir., 1970). The merits of such a stay depend largely on the facts of each particular case. SEC v. Stewart, 476 F.2d 755, 758 (2 Cir., 1973)("...individualized facts in each case of this sort will generally be dispositive..") The issue is simply: on these facts, what does justice call for? U.S. v. Kordel, 397 U.S. 1 (1970); Gordon v. FDIC, 427 F.2d 578 (D.C. Cir., 1970). Analysis of the precedents reveals a number of factors, none of which, standing alone, is decisive but each of which has some bearing on the decision. Recapitulation of these decisional factors may be helpful here.

1. Forum. It is plain from reading the cases that (for obvious reasons) a decision to enjoin a concurrent civil case is more easily reached if both the enjoined civil case and the continuing criminal case are pending in the same forum. 1/ Perry v. McGuire, 36 FRD 272 (5 Cir., 1962); Texaco v. Borda, 338 F.2d 607 (3 Cir., 1967); U.S. v. Maine Lobstermen's Assn., 22 FRD 199 (D.C. Me., 1958).

One federal court of appeals has noted that if the enjoining and enjoined courts are both immediately subject to the same appellate supervision the problems likely to arise from intercourt injunctions are somewhat moderated U.S. v. Simon, et al., 373 F.2d 649 (2 Cir., 1967); cert. den. sub nom. Simon v. Whitney, 386 U.S. 1030 (1960) but neither that nor any other court has made such a distinction in practice. By the rule of Simon, which is apparently a rule of decision rather than of jurisdiction 2/ a federal court in which a criminal case is pending will not ordinarily enjoin prosecution of a concurrent civil case in another court or agency. Ibid. 652 In the present situation where this proceeding is before the Federal Trade Commission and the criminal indictment is in the Southern District of New York, it would clearly be unusual for this proceeding to be stayed by an inter-federal injunction.

1/ Needless to say the converse is not true. The mere fact that the civil and criminal cases are both pending in a common forum is no guarantee that prosecution of the civil case will be enjoined. U.S. v. Kordel, 397 U.S. 1 (1970).

2/ The 2nd Circuit Court of Appeals in Simon suggested a possible jurisdictional question by expressly "assuming" such jurisdiction "without deciding" the question before refusing a stay.

2. Priority in time. It is an ancient maxim of both law and equity that qui prior est tempore, potior est jure. For this reason, as a rule inter-federal injunctions have issued only if the suit in the enjoining forum was commenced before the suit in the enjoined forum. Indeed, appellate courts have applied this "priority of action" rule to invalidate inter-federal injunctions where the enjoined suit was begun first. See note on "Concurrent Civil And Criminal Proceedings" in 67 Col. L. Rev. 1277 at 1293 (fn. 96) and cases cited therein.

In accordance with these general principles, priority of action is plainly a powerful, if not absolutely controlling, factor in deciding whether a civil suit should be stayed pending determination of a related criminal prosecution. That a later criminal case, particularly if it will not be tried immediately, should be used to prevent scheduled trial of an earlier civil case, particularly one long in the preparation, is plainly contrary to orderly judicial administration. It would be surprising if more than a few examples could be found and, in fact, we have found none.

As shown by the various concurrent civil/criminal cases cited in respondent's brief as relevant to this question, whenever the reports reveal that a civil suit was brought first (and, we must add, was not intended to obtain bootleg discovery for use in the criminal case) it is regularly held that a stay of that suit would be improper: U.S. v. Kordel, 397 U.S. 1 (1970); U.S. v. Simon, 373 F.2d 649 (2 Cir. 1967); cert. den. sub nom. Simon v. Wharton, 386 U.S. 1030 (1967); Gellis v. Casey, 338 F. Supp. 651 (S.D.N.Y., 1972). On the other hand, a stay of the civil suit may 3/ be held proper, where (1) there is no showing that the civil suit was brought first, Texaco v. Borda, 383 F.2d 607 (3 Cir. 1967) and, a fortiori, where (2) there is an affirmative showing that the civil suit was not brought first, Silver v. McCamey, 221 F.2d 873 (D.C. Cir., 1955).

3/ Of course, failure to establish priority in time does not necessarily mean that a stay of the civil action is inevitable, as witness Gordon v. FDIC, 427 F.2d 578 (D.C. Cir. 1970) where it expressly appears that a criminal prosecution and civil recovery case were instituted about the same time, yet after a 3 months stay of the recovery action a new stay pending dispcsition of the criminal case was denied and the denial was upheld by the D.C. Circuit Court of Appeals.

The only qualification we find to this basic rule involves bad faith. If suit was brought or civil discovery sought with an ulterior motive, e.g. to obtain discovery ostensibly for the civil suit but actually for the criminal case, and the party would not have been entitled to such discovery under the more restrictive Federal Rules of Criminal Procedure, it is generally held that such discovery will be stayed pending the outcome of the criminal prosecution. See dictum in U.S. v. Kordel, 397 U.S. 1, 11-12 (1970). This policy against deliberate circumvention of the rules of criminal discovery by recourse to the more liberal rules for civil discovery would appear to be the explanation of the holding in Campbell v. Eastman, 307 F.2d 478 (5 Cir. 1971), cert. den. 371 U.S. 955 (1963). There the 5th Circuit Court of Appeals held that a civil tax refund case brought first should have been stayed pending the outcome of a tax evasion prosecution brought later. However, it appears that the bringing of a criminal case was anticipated by the taxpayer when the refund case was filed and the appellate Court made it plain that it believed the taxpayer's motive was ulterior. For that reason the "priority" of the civil suit would not be honored.

Applying the basic principle that priority in time ordinarily establishes priority of right, in the present case we note the following important facts. The Commission's investigation of Amrep's real estate promotions pre-dated that of the Justice Department by nearly a year. The Commission's complaint pre-dated the indictment of the grand jury in the Southern District of New York by some nine months. Much pretrial discovery here was completed before the grand jury's indictment. A trial date of 2/17/76 (since extended to 3/29/76) was set for this matter before a trial date of 10/5/76 was set for the indictment.4/ Finally, there is no suggestion that expedition of this matter has been the result of a deliberate scheme to circumvent the limitations of criminal discovery. Thus by all normal standards governing trial priority this case should be heard before the criminal indictment.

4/ The transcript of proceedings at which the date for the criminal case was set (Ex. 3 attached to respondent's moving papers) reveals that Metzner, J. was not even advised that there was a pending proceeding before this Commission, let alone that it had already been set for trial.

3. Significance of indictment. A principal argument of respondent's "special counsel" is that the case for a stay here was significantly improved when the grand jury investigation resulted in an indictment and thus created a more direct and immediate conflict with this civil suit. It is no doubt true that the conflict between criminal and civil cases here was sharpened by the indictment, thus eliminating one of the problems which most bothered Chief Judge Hanscom in his ruling of 6/27/75. However, the removal of a serious barrier to a stay is not the same thing as establishing affirmative grounds for such a stay. There is strong authority that the mere fact of indictment is by no means sufficient in itself to create the kind of conflict which may merit a stay. Thus the Supreme Court explained in U.S. v. Kordel, 397 U.S. 1, 11 (1970):

> "It would stultify enforcement of federal law to require a governmental agency such as the FDA invariably to choose either to forego recommendation of a criminal prosecution once it seeks civil relief or to defer civil proceedings pending the ultimate outcome of a criminal trial."

To the same effect is the language of the D.C. Circuit Court of Appeals in Gordon v. FDIC, 427 F.2d 578, 580 (1970) in denying for more than three months a stay of a civil action paralleled by a criminal one:

> "(T)he fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or a related subject matter." Gordon v. FDIC, 427 F.2d 578 (D.C. Cir., 1970).

Here it is plain that the indictment of last October did not change either the Commission's long-standing priority of investigation and prosecution or the public interest in ending this alleged fraud, if such it be, which are the central reasons why the Commission's case should be tried first. All that the indictment really added to the situation was a certainty that there will be a criminal trial sometime but it raised no inference that there must be a trial conflict. The mere addition of an indictment is clearly insufficient to justify issuance of a stay here.

a temporary stay of final installments of discovery now due

4. Injury to the criminal defendant's position. Respondent stresses the possibility of injury to its position in the criminal case if the civil case be not stayed until the criminal trial is finished. At first glance this is a surprising argument. In situations like the present it is usually the criminal prosecutor who prefers not to have a dress rehearsal which may afford the criminal defendant some discovery of the Government's case that the Federal Rules of Criminal Procedure would deny him. 5/ Be that as it may, let us examine the argument.

Respondent would find serious injury to its position in the criminal case by virtue of the predicted operation of the Fifth Amendment's privilege against self-incrimination here. Its counsel paints a picture of wholesale involvement in allegedly questionable activity by virtually all of Amrep's top executives, which will supposedly lead to an unwillingness on their parts to testify, thus depriving Amrep of its most natural reservoir of witnesses. But the unwillingness of Amrep's executives to testify cannot keep these men off the stand. It is well-established that in a civil (as distinquished from a criminal) trial they must, if subpoenaed, actually take the stand and claim their privilege against self-incrimination, question by question, as may be appropriate. U.S. v. Simon, et al., 373 U.S. F.2d 649, 650, 652 (2 Cir. 1967), cert. den. sub nom. Simon v. Wharton, 386 U.S. 1030 (1967).

As to those specific questions which evoke no claim of privilege, there will be record answers by the witness and, whatever their tenor, to that extent there will clearly be no legal injury to respondent. As to those specific questions, the answers to which the witness believes may incriminate him, he will presumably not answer. But it is hard to see how Amrep will be injured thereby. Indeed, Amrep would presumably benefit as much as the witness from his failure to give answers which are likely to incriminate himself and, by inference therefrom, Amrep, the principal he served. While Amrep, as a corporation, has no privilege against self-incrimination,

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5/ Note, for example, footnote 27 at page 12 in U.S. v. Kordel, 397 U.S. 1 (1970), which marshals the cases on this point. In nine cases cited there the stay was sought by the criminal prosecution while in only two was the stay sought by the criminal defense.

there is nothing in law or logic which would prevent it from taking the benefit of its agents' sealed lips.

Moreover, the Supreme Court has made it clear in U.S. v. Kordel, 397 U.S. 1 (1970) that the loss of testimony due to 5th Amendment claims of potential witnesses is not ground for a stay in this situation, unless all the voices that could give such testimony are stilled. 6/ Here it is a gross exaggeration for counsel to imply that the indictment of Amrep's executives has been so comprehensive as to leave respondent bereft of potential witnesses concerning company policies and activities of the past few years.

Exhibit #5 in respondent's moving papers lists the positions in Amrep held by individual indictees since 1962. While designed to maximize the number of positions in Amrep held by indictees, at the same time it makes it clear that there have always been a number of non-indictees in responsible positions. Some of these non-indictees may no longer be available to respondent but their unavailability should be established to make a more convincing argument that none but the indictees can make Amrep's case for it. Non-indicted officers and directors, as shown in standard reference works such as Moodys' and Dunn & Bradstreet, 7/ were as follows:

Year	Officers	Directors (non-officers)
1962	J.H.R. Cromwell, Chmn. Robert Berger, Asst. V.P. C.A. Willoughby, Asst. V.P.	A.I. Berliner L.E. White M.S. Roberts
1963	J.H.R. Cromwell, Chmn.	A.I. Berliner Robert Berger C.A. Willoughby L.E. White M.S. Roberts

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6/ Indeed, at p. 9 the court expressly reserved the question whether a stay would be proper even if all of a corporation's employees were to take the 5th.

7/ Names are listed to the year previous to the year of publication i.e. the Ch. Bd. shown in Moodys' 1963 edition is listed here under 1962.

Year	Officers	Directors (non-officers)
1964	M.S. Roberts, V.P.	Norman Eisner Philip Robbins A. I. Berliner L.E. White
1965	M.S. Roberts, V.P.	Norman Eisner Philip Robbins A.I. Berliner L.E. White
1966	----------	Norman Eisner Philip Robbins A.I. Berliner L.E. White M.S. Roberts
1967	----------	Norman Eisner Philip Robbins Arthur I. Berliner Leo E. White Mitchell S. Roberts
1968	(NO DATA AVAILABLE TO ALJ)	(NO DATA AVAILABLE TO ALJ)
1969	Mitchell S. Roberts, V.P. Mktg. Howard Mandel, V.P. Sales	Norman Eisner Philip Robbins Arthur I. Berliner Leo E. White Jerome Belson
1970	Peter Zaknich, V.P. M.S. Roberts, V.P. E.B. Winslow, Secy.	Norman Eisner W.G. Baker, Jr. R.D. McGranahan L.E. White Jerome Belson
1971	M.S. Roberts, V.P. J.L. Ross, Treas. E.B. Winslow, Secy.	Norman Eisner W.G. Baker, Jr. L.E. White Jerome Belson
1972	M.S. Roberts, V.P. William Small, V.P. J.L. Ross, V.P./Treas. E.B. Winslow, Secy.	W.G. Baker, Jr. L.E. White Jerome Belson

Year	Officers	Directors (non-officers)
1973	M.S. Roberts, V.P. Lawrence Perlmutter, V.P. J.L. Ross, V.P./Treas. E.B. Winslow, Secy.	W.G. Baker, Jr. L.E. White Jerome Belson
1974	M.S. Roberts, V.P. Lawrence Perlmutter, V.P. J.L. Ross, V.P./Treas. E.B. Winslow, Secy.	W.G. Baker, Jr. Jerome Belson
1975	(NOT AVAILABLE TO ALJ)	(NOT AVAILABLE TO ALJ)

Other non-indicted officers, according to complaint counsel's brief (p. 8), include Sherman Lurie, Alfred F. Dellentash, Theodore Schreier and Victor Cannizzaro.

It would appear to the Administrative Law Judge that Amrep is by no means as yet de-nuded of unindicted executives sufficiently knowledgable either to answer any remaining discovery requests or to testify at the coming hearing concerning its policies and activities. It would further seem that any testimony which Amrep may lose because its key employees feel they had better invoke the Fifth Amendment when asked about their principal's policies and activities can hardly be much of a loss to their principal, Amrep. In short, it is hard to see how the privilege against self-incrimination is a sufficiently significant factor here to reverse the normal priority and public interest which would put trial of the Commission's complaint ahead of the much newer criminal indictment.

5. Injury to the public. Although respondent's "special counsel" is concerned entirely with the effect of a stay on respondent's rights, it is equally important to consider the effect of such a stay on the public's rights. As pointed out by the D.C. Circuit Court of Appeals in Gordon v. FDIC, 427 F.2d 578, 580 (D.C. Cir., 1970):

> "Justice is meted out in both civil and criminal litigation. The Court in its sound discretion must assess and balance the nature and substantiality of the injustice claimed on either side."

Here we are told by complaint counsel that their proof will reveal a vast promotion which now brings in

regularly something like $35 million a year in payments on allegedly deceptive land purchase contracts. Complaint counsel's brief, page 22. If the deception alleged is established, that means that Amrep's customers are being wrongfully deprived of nearly $100,000 every day that this litigation continues. We deem that a powerful reason for not staying this proceeding.

Respondent's brief (p. 39) argues that the Commission's failure to seek a preliminary injunction suggests no great public interest in an early conclusion of this litigation. However, there are many possible reasons, to none of which we are privy, why the Commission may or may not seek immediate injunctive relief when it issues a complaint. Whatever its reason for not seeking an injunction or receivership or other similar auxiliary remedy in this case, the fact remains that if respondent's activities have, in fact, been wrongful, there is a vast public stake in righting those wrongs. That public interest must weigh heavily in the balance against respondent's desire for an indefinite stay of this proceeding.

Respondent's alleged trial preparation problem. Respondent has two strings to the bow of its stay motion. It is concerned not only about sequence, i.e. the fairness of trying the administrative proceeding before the criminal one, as discussed above, but also about the ability of its counsel, "special" or otherwise, to prepare and try the administrative case while preparing and trying the criminal one. It is to this alleged preparation/trial problem of counsel that we now direct our attention.

While "special counsel" not unnaturally approaches this question from the viewpoint of a person new to the case, that cannot be the proper perspective. As complaint counsel well put it in their brief (at p. 19), the entry of new counsel does not mean he must "re-invent the wheel". If every substitution of counsel were a proper occasion to start preparation for trial all over again, it is doubtful whether any case would ever get to trial. A substitute trial attorney must take a case substantially as he finds it.

Moreover, in this case we have only a limited substitution of counsel. The record shows formal appearances by three attorneys for Amrep: Solomon H. Friend, Esq., Theodore R. Schreier, Esq., and I. David Parkoff, Esq. A fourth attorney, David Waldman, Esq.,

appeared with Messrs. Schreier and Parkoff at a recent (10/30/75) prehearing conference. Mr. Friend was indicted in New York with his client, Amrep, on 10/28/75. Since then his place as lead counsel seems to have been taken by Morton Maneker, Esq. of Proskauer, Rose, Goetz & Mendelsohn, who, however, has never entered a formal appearance and refers to his representation as being only for the "special" purpose of obtaining the lengthy stay sought here.

Although Mr. Maneker was given a one month "moratorium" from 12/2/75 to 1/2/76 to familiarize himself with this case and a six weeks postponement of the trial date from 2/17/76 to 3/29/76, he still contends that he cannot be ready to try this case before the criminal trial starts on 10/5/76. His position would seem rather at variance with that taken by Amrep's three older counsel (Messrs. Schreier, Parkoff and Waldman) at the prehearing conference of 10/30/75, where a schedule for remaining discovery and a trial date of 2/17/76 (now continued to 3/29/76) were settled on. (See Chief Judge Hanscom's summarizing order of 10/31/75, and the present Administrative Law Judge's rescheduling thereof, dated 12/2/75.)

In view of the length of time for trial preparation which has passed since issuance of this complaint (on 3/11/75); in view of the fact that two and a half months still remain before trial begins (on 3/29/76); in view of the continued availability of three of the same counsel who have been working on this case since it began; in view of the fact that another member of the Proskauer firm than Mr. Maneker (George Gallantz, Esq.) will apparently carry the burden with respect to the criminal case (see Ex. 4 to respondent's moving papers); in view of the fact that Mr. Maneker was given a whole month to familiarize himself with this case; and finally, in view of the fact that respondent will be given a month and a half to perfect its defense after complaint counsel rest, the Administrative Law Judge finds that there is adequate time for respondent's counsel, "special" or otherwise, to prepare and try this case starting 3/29/76.

As for respondent's assertion that the preparation and trial of this case as scheduled will make its preparation and trial of the criminal case by 10/5/76 impossible, there appears to be little support for this speculation. In the first place, while the Proskauer firm represents Amrep in both cases, the lead has been taken by different

individual attorneys (Messrs. Gallantz and Maneker) in each proceeding. Behind each of them is a team of at least three experienced house-counsel who have long been familiar with the facts of both cases. Equally important is the fact that insofar as any of these lawyers may work on both cases, almost anything they learn about the facts of one will be of value in the trial of the other. The coincidence of facts in the two cases is not complete but very substantial. This complaint is primarily concerned and the indictment is solely concerned with respondent's biggest development, Rio Rancho Estates in New Mexico. Most of the work on Rio Rancho for this case will thus be preparation for the criminal case, too.

As for actual conflict between the trial dates for these two proceedings, any overlap has to be de minimis. Between March 29 and October 5, as now planned, complaint counsel will put in a case that may take up to three months; there will be a 1 1/2 months recess for preparation of the defense case; and there will be another 1 1/2 months for its presentation. This cannot leave much of the defense remaining on October 5. Moreover, the slight possibility of witness overlaps occurring after October 5 can be virtually eliminated by starting with the Rio Rancho (New Mexico) testimony, which is common to both proceedings, leaving to the later part of the defense all testimony concerning the few developments in other areas which are reached by this complaint but not by the criminal indictment. Rebuttal testimony is usually brief and any witness conflicts should be minimal, particularly if a continuing close liason is established between complaint counsel here and the Asst. U.S. Attorney trying the criminal case. It is the conclusion of the Administrative Law Judge, who will have the responsibility for making such an arrangement work, that it can be made to work.

Nature of this ruling. It is argued by respondent's "special counsel" that its motion to stay this proceeding pending conclusion of the criminal trial goes to respondent's legal rights and that the Administrative Law Judge may therefore properly rule on it. Respondent has further already requested an interlocutory appeal to the Commission, if the Judge's ruling is adverse. Complaint counsel are apparently more inclined to the view that the motion to stay calls chiefly for an exercise of administrative discretion and therefore, except for any due process questions, that the motion must be certified to the Commission

for decision. The Administrative Law Judge is somewhat more inclined to the view that this is essentially a question of administrative discretion.

Accordingly, he now CERTIFIES the motion for a stay to the Commission with a recommendation that for all the foregoing reasons such motion be denied. If, however, said motion or any question subsumed thereunder is more properly treated as a matter of law or judicial discretion than as a matter for exercise of administrative discretion, the Administrative Law Judge now DENIES such motion as a matter of law and/or judicial discretion and grants respondent an immediate interlocutory appeal therefrom under Rule §3.23(b), although, in view of the imminence of trial and the need for preparation therefor he DENIES any temporary stay of proceedings under Rule §3.23(c). Earlier denial of a temporary stay of the discovery schedule laid down on 12/2/75 is confirmed and respondent's telegraphic application for an interlocutory appeal from denial thereof is herewith DENIED.

Paul R. Teetor
Administrative Law Judge

January 15, 1976

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of AMREP CORPORATION, a corporation	DOCKET NO. 9018

FURTHER EXTENSION OF TIME
FOR PRETRIAL PROCEDURES
AND HEARING OF THIS CASE

In view of the statement of Metzner, J. on 1/15/76 in U.S. v. Amrep Corporation, et al., 76 Cr. 1023 in the Southern District of New York, at page 9 of the slip opinion, that he would anticipate adjournments of existing dates for certain proceedings in this matter to compensate for the temporary stay which was ordered by his court, and the same appearing fair to the Administrative Law Judge here, it is now ORDERED that the following further changes be made in the "Rescheduling Of Pretrial Proceedings And Postponement Of Hearing Date" issued by the Administrative Law Judge under date of 12/2/75:

Paragraph #2: Change 1/9/76 to 1/23/76

Paragraph #3: Change 1/9/76 to 1/23/76

Paragraph #4: Change 1/16/76 to 1/30/76

Paragraph #5: Change 1/23/76 to 2/6/76

Paragraph #6: Change period 2/2/76-2/13/76 to period 2/17/76-2/27/76

Paragraph #7: Change 2/27/76 to 3/12/76

Paragraph #8: Change 3/29/76 to 4/12/76

Paul R. Teetor
Administrative Law Judge

January 16, 1976

Sent 1/19/76
Time 6:00

V

RE: A

T•

WU TELTEX LSA•

RCPUT NYK

TLTX

06 NY PD 1/19/76

PERRY W• WINSTON, ESQ• - REPORT DELIVERY

FEDERAL TRADE COMMISSION

LOS ANGELES REGIONAL OFFICE

ROOM 13209 - FEDERAL BILDING

11000 WILSYHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90024

RE: AMREP CORP., D• 9018

URGENT APPLICATION IS HEREBY MADE FOR A STAY OF PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE, PURSUANT TO SECTION 3.23(C) OF THE COMMISSION'S RULES OF PRACTICE, PENDING AN INTERLOCUTORY APPEAL GRANTED BY HIM•

BY ORDER DATED JANUARY 15, 1976 AND RECEIVED TODAY, JANUARY 19, 1976, THE ADMINISTRATIVE LAW JUDGE CERTIFIED TO THE COMMISSION RESPONDENT'S MOTION FOR A STAY OF PROCEEDINGS PENDING TRIAL OF A CRIMINAL INDICTMENT INVOLVING THE SAME ISSUES (OR, IN THE ALTERNATIVE, DENIED SUCH MOTION AND GRANTED AN INTERLOCUTORY APPEAL). THE ADMINISTRATIVE LAW JUDGE ALSO DENIED A STAY PENDING THE INTERLOCUTORY APPEAL•

BY ORDER DATED JANUARY 16, 1976 AND ALSO RECEIVED TODAY, JANUARY 19, 1976, THE ADMINISTRATIVE LAW JUDGE IS, NEVERTHELESS, REQUIRING RESPONDENT TO PROCEED ON JANUARY 23, 1976 AND JANUARY 30, 1976 WITH DISCOVERY PROCEEDINGS BEFORE THE VALIDITY

BEST COPY AVAILABLE

BY ORDER DATED JANUARY 15, 1976 AND RECEIVED TODAY, JANUARY 19, 1976, THE ADMINISTRATIVE LAW JUDGE CERTIFIED TO THE COMMISSION RESPONDENT'S MOTION FOR A STAY OF PROCEEDINGS PENDING TRIAL OF A CRIMINAL INDICTMENT INVOLVING THE SAME ISSUES (OR, IN THE ALTERNATIVE, DENIED SUCH MOTION AND GRANTED AN INTERLOCUTORY APPEAL). THE ADMINISTRATIVE LAW JUDGE ALSO DENIED A STAY PENDING THE INTERLOCUTORY APPEAL.

BY ORDER DATED JANUARY 16, 1976 AND ALSO RECEIVED TODAY, JANUARY 19, 1976, THE ADMINISTRATIVVE LAW JUDGE IS, NEVERTHELESS, REQUIRING RESPONDENT TO PROCEED ON JANUARY 23, 1976 AND JANUARY 30, 1976 WITH DISCOVERY PROCEEDINGS BEFORE THE VALIDITY AND FAIRNESS OF SUCH PROCEEDINGS HAS BEEN DETERMINED. THIS PRACTICE HAS ALREADY BEEN CRITICIZED BY THE DISTRICT COURT IN THE PROCEEDINGS DESCRIBED BELOW (OPINION, P. 7).

THERE IS NO URGENCY TO THESE DISCOVERY PROCEEDINGS. BY ORDER DATED JANUARY 15, 1976, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK HAS ALREADY ENJOINED THE COMMISSION FROM PROCEEDING IN THIS MATTER BEYOND THE PRESENTATION OF ITS CASE-IN-CHIEF, OR JULY 30, 1976, UNTIL AFTER THE CONCLUSION OF THE CRIMINAL TRIAL SCHEDULED TO BEGIN ON OCTOBER 5, 1976. THIS ACTION WAS TAKEN SOLELY TO PREVENT INTERFERENCE WITH THE TRIAL AND PREPARATION OF THE CRIMINAL CASE. THE COURT DID NOT PASS UPON THE QUESTION BEFORE THE COMMISSION - WHETHER RESPONDENT CAN ADEQUATELY DEFEND THE ADMINISTRATIVE PROCEEDING, PARTICULARLY IN VIEW OF THE COMPRESSED PRE-TRIAL AND HEARING SCHEDULE ESTABLISHED BY THE ADMINISTRATIVE LAW JUDGE, DESPITE THE PENDING INDICTMENT AGAINST THE CORPORATION AND ITS PRINCIPAL OFFICERS INCLUDING ITS CHIEF COUNSEL IN THIS PROCEEDING FOR THE PAST TWO AND ONE-HALF YEARS, SOLOMON H. FRIEND. AFTER SEVERAL ATTEMPTS, RESPONDENT HAS BEEN UNABLE TO OBTAIN SUBSTITUTE COUNSEL WHO WOULD UNDERTAKE TO MEET THE ABBREVIATED TIME SCHEDULE ESTABLISHED HEREIN. IN ADDITION TO THE INADEQUACY OF TIME RESULTING FROM THE PRESENT ATTEMPT TO TRY THIS CASE BEFORE THE CRIMINAL CASE, QUESTIONS REMAIN AS TO RESPONDENT'S ABILITY TO RESPOND TO DISCOVERY REQUESTS AND PREPARE AND CONDUCT DEPOSITIONS WITH ITS PRINCIPAL OFFICERS UNDER INDICTMENT AND RECALCITRANT

[illegible] PRE-TRIAL [illegible] SCHEDULE ESTABLISHED BY THE ADMINISTRATIVE LAW JUDGE, DESPITE THE PENDING INDICTMENT AGAINST THE CORPORATION AND ITS PRINCIPAL OFFICERS INCLUDING ITS CHIEF COUNSEL IN THIS PROCEEDING FOR THE PAST TWO AND ONE-HALF YEARS, SOLOMON H. FRIEND. AFTER SEVERAL ATTEMPTS, RESPONDENT HAS BEEN UNABLE TO OBTAIN SUBSTITUTE COUNSEL WHO WOULD UNDERTAKE TO MEET THE ABBREVIATED TIME SCHEDULE ESTABLISHED HEREIN. IN ADDITION TO THE INADEQUACY OF TIME RESULTING FROM THE PRESENT ATTEMPT TO TRY THIS CASE BEFORE THE CRIMINAL CASE, QUESTIONS REMAIN AS TO RESPONDENT'S ABILITY TO RESPOND OR OBJECT TO DISCOVERY REQUESTS AND PREPARE AND CONDUCT CROSS-EXAMINATION WITH ITS PRINCIPAL OFFICERS UNDER INDICTMENT AND NECESSARILY CONCERNED ABOUT SELF-INCRIMINATION AND PRE-TRIAL DISCLOSURE OF THEIR CRIMINAL DEFENSE.

THUS, WHILE THE PRESENT INJUNCTION BY THE DISTRICT COURT PRECLUDES CONCLUSION OF THE PENDING PROCEEDING BEFORE THE CRIMINAL TRIAL AND REMOVES ANY CLAIM OF URGENCY TO THE PROCEEDING, IT DOES NOT ADJUDICATE THE FAIRNESS OR PROPRIETY OF PROCEEDING AT ALL. UNLESS A STAY PENDING [illegible] IS GRANTED, INTERIM PROCEEDINGS MAY THUS RENDER INVALID ANY ORDER WHICH MAY ULTIMATELY RESULT WHILE THE QUESTION OF THE VALIDITY OF PROCEEDING AT THE TIME IS STILL BEING ADJUDICATED.

THE GROUNDS FOR THIS APPLICATION ARE MORE FULLY SET FORTH IN THE BRIEF ACCOMPANYING RESPONDENT'S MOTION FOR A STAY DATED DECEMBER 19, 1975 AND A LETTER DATED DECEMBER 12, 1975.

WHILE WE DO NOT BELIEVE AN APPLICATION FOR A STAY UNDER SECTION 3.23(C) OF THE COMMISSION'S RULES REQUIRES PERMISSION OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTION 3.23(D) TO APPEAL HIS DENIAL OF SUCH A STAY, WE ARE, BY COPY OF THIS TELEGRAM, REQUESTING THE ADMINISTRATIVE LAW JUDGE TO MAKE THE NECESSARY DETERMINATION IN VIEW OF THE SHORTNESS OF TIME AND IN ORDER TO ASSURE COMMISSION CONSIDERATION OF THIS APPLICATION.

A COPY OF THIS APPLICATION IS BEING SENT TO FEDERAL TRADE COMMISSION COMPLAINT COUNSEL.

[illegible]

THUS, WHILE THE PRESENT INJUNCTION BY THE DISTRICT COURT PRECLUDES CONCLUSION OF THE PENDING PROCEEDING BEFORE THE CRIMINAL TRIAL AND REMOVES ANY CLAIM OF URGENCY TO THE PROCEEDING, IT DOES NOT ADJUDICATE THE FAIRNESS OR PROPRIETY OF PROCEEDING AT ALL. UNLESS A STAY PENDING INTERLOCUTORY APPEAL IS GRANTED, INTERIM PROCEEDINGS MAY THUS RENDER INVALID ANY ORDER WHICH MAY ULTIMATELY RESULT WHILE THE QUESTION OF THE VALIDITY OF PROCEEDING AT THE TIME IS STILL BEING ADJUDICATED.

THE GROUNDS FOR THIS APPLICATION ARE MORE FULLY SET FORTH IN THE BRIEF ACCOMPANYING RESPONDENT'S MOTION FOR A STAY DATED DECEMBER 19, 1975 AND A LETTER DATED DECEMBER 12, 1975.

WHILE WE DO NOT BELIEVE AN APPLICATION FOR A STAY UNDER SECTION 3.23(C) OF THE COMMISSION'S RULES REQUIRES PERMISSION OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTION 3.23(B) TO APPEAL HIS DENIAL OF SUCH A STAY, WE ARE, BY COPY OF THIS TELEGRAM, REQUESTING THE ADMINISTRATIVE LAW JUDGE TO MAKE THE NECESSARY DETERMINATION IN VIEW OF THE SIGNIFICANCE OF THIS AND IN ORDER TO ASSURE COMMISSION CONSIDERATION OF THIS APPLICATION.

A COPY OF THIS APPLICATION IS BEING SENT TO FEDERAL TRADE COMMISSION COMPLAINT COUNSEL.

PROSKAUER ROSE GOETZ AND MENDELSOHN
APPEARING SPECIALLY FOR AMREP CORP.
FOR PURPOSES OF THIS MOTION ONLY
BY: MORTON M. BANEKER
300 PARK AVENUE
NEW YORK, NEW YORK 10022
(212) 593-9426

WU TELTEX LSA
ROPUI NYK
V

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

FEDERAL TRADE COMMISSION
RECEIVED
JAN 21 1976
SECRETARY

In the Matter of

AMREP CORPORATION,
a corporation.

DOCKET NO. 9018

DENIAL OF STAY UNDER RULE §3.23(c)

Respondent, by wire dated January 19, 1976, but not received by the Administrative Law Judge until January 21, 1976, recites the Administrative Law Judge's order of January 15, 1976, granting Respondent a certification or immediate interlocutory appeal from denial of a stay of all proceedings but declining to award a temporary stay of discovery pending the Commission's ruling on the interlocutory appeal. Respondent also recites the Administrative Law Judge's order dated January 16, 1976, extending all remaining pre-trial and trial dates two weeks in accordance with a suggestion by Judge Metzner of the Southern District of New York on January 15, 1976. Respondent now makes "urgent application" for a temporary stay of proceedings before the Administrative Law Judge under Rule §3.23(c), pending its interlocutory appeal to the Commission from the Administrative Law Judge's January 15, 1976 order certifying or denying a stay.

Respondent argues that there is now "no urgency" to Complaint Counsel's pending discovery because Judge Metzner's July 30 cut-off may put over some or all of Respondent's defense here until after conclusion of a related criminal case in the Southern District of New York next fall. The "urgency" with which we are concerned, however, is to supply any missing elements of Complaint Counsel's case and to get their proposed evidence into Respondent's hands a reasonable length of time before the start of the case in chief, now scheduled for April 12, 1976. If anything, that urgency has been increased by the recent loss of two weeks while Respondent has been seeking various stays from Judge Metzner and others. Respondent further suggests that if it is not granted

a temporary stay of final installments of discovery now due on January 23, 1976* and January 30, 1976, an eventual Commission order ruling on Respondent's interlocutory appeal to stay the whole case would be "rendered invalid." It is not clear what that means but, if it charges possible "mootness", such is obviously not the case. Respondent's interlocutory appeal is concerned with alleged lack of time to do all the things it is scheduled to do, not that it is being forced to give up anything wrongfully. Neither "mootness" nor anything else argues that Respondent should not turn over the responsive materials due shortly while the Commission ponders its interlocutory appeal. Nothing has transpired to change the Administrative Law Judge's opinion that preparation of this case must continue apace while Respondent appeals the denial of his various dilatory motions.

Respondent's telegraphic motions for consent by the Administrative Law Judge to an interlocutory appeal by Respondent from the denial of a temporary stay of proceedings pending Commission action on Respondent's interlocutory appeal from the denial of a stay of all proceedings until the criminal case is concluded is accordingly DENIED.

Paul R. Teetor
Administrative Law Judge

January 21, 1976

---

*A further extension of this date has now been effected by an agreement between Respondent and the General Counsel of this Commission that discovery due on January 23, 1976, may go over to January 27, 1976, pending a certain hearing on that date by the Court of Appeals for the Second Judicial Circuit.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Paul Rand Dixon, Acting Chairman
Elizabeth Hanford Dole
Stephen Nye

In the Matter of	)	DOCKET NO. 9018
AMREP CORPORATION, a corporation.	)	ORDER DENYING APPLICATION FOR STAY OF DISCOVERY

The Commission, having considered the motion of respondent Amrep Corp., filed on January 20, 1976, for a stay of discovery, has determined that a sufficient reason for such a stay has not been demonstrated. Accordingly,

IT IS ORDERED that the aforesaid motion be, and it hereby is, denied.

By the Commission.

Chas. A. Tobin
Charles A. Tobin
Secretary

SEAL

ISSUED: January 22, 1976

Rec'd 1/22/76
Time 3:50

ITT World Communications Inc. NY Phone Serv.Telegr.737-3311/Answ.-7522/Infor.-7550/Telex-7590

WU TELTEX WSH

A020(1553)

ROPUT NYK

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01 NY PD 1/22/76

SECRETARY - REPORT DELIVERY

FEDERAL TRADE COMMISSION

PENNSYLVANIA AVENUE AND 15TH STREET, N.W.

WASHINGTON, D.C.

RE: AMREP CORP. D. 9018

BY ORDER DATED JANUARY 15, 1976 AND RECEIVED JANUARY 19, 1976, THE ADMINISTRATIVE LAW JUDGE EITHER DENIED RESPONDENT'S MOTION FOR A STAY OF PROCEEDINGS PENDING TRIAL OF A CRIMINAL INDICTMENT INVOLVING THE SAME ISSUES AND GRANTED AN INTERLOCUTORY APPEAL FROM SUCH DENIAL OR, IN THE ALTERNATIVE, CERTIFIED TO THE COMMISSION RESPONDENT'S MOTION AS ONE BEYOND HIS AUTHORITY TO DETERMINE.

IN THE EVENT THE COMMISSION DETERMINES THAT THE ADMINISTRATIVE LAW JUDGE HAD THE AUTHORITY TO DECIDE SUCH MOTION, AND THAT HIS ORDER MAY THEREFORE BE REVIEWED BY IT ON INTERLOCUTORY APPEAL ONLY, RESPONDENT HEREBY APPLIES, PURSUANT TO SECTION 3.23(B) OF THE COMMISSION'S RULES, FOR SUCH REVIEW OF THE ORDER OF THE ADMINISTRATIVE LAW JUDGE DENYING SUCH MOTION.

IN EITHER EVENT, AND PARTICULARLY IN VIEW OF EVENTS OCCURRING SUBSEQUENT TO THE FILING OF RESPONDENT'S MOTION ON DECEMBER 19, 1975 AND SUBSEQUENT TO THE ISSUANCE OF THE ADMINISTRATIVE LAW JUDGE'S ORDER ON JANUARY 15, 1976, RESPONDENT HEREBY REQUESTS PERMISSION TO FILE A MEMORANDUM AND OTHER PAPERS IN SUPPORT OF ITS APPLICATION FOR REVIEW BY JANUARY 29, 1976. IN

ITT World Communications Inc. NY Phone Serv.Telegr.737-3311/Answ.-7522/Infor.-7550/Telex-7590

IN THE EVENT THE COMMISSION DETERMINES THAT THE ADMINISTRATIVE LAW JUDGE HAD THE AUTHORITY TO DECIDE SUCH MOTION, AND THAT HIS ORDER MAY THEREFORE BE REVIEWED BY IT ON INTERLOCUTORY APPEAL ONLY, RESPONDENT HEREBY APPLIES, PURSUANT TO SECTION 3.23(B) OF THE COMMISSION'S RULES, FOR SUCH REVIEW OF THE ORDER OF THE ADMINISTRATIVE LAW JUDGE DENYING SUCH MOTION.

IN EITHER EVENT, AND PARTICULARLY IN VIEW OF EVENTS OCCURRING SUBSEQUENT TO THE FILING OF RESPONDENT'S MOTION ON DECEMBER 19, 1975 AND SUBSEQUENT TO THE ISSUANCE OF THE ADMINISTRATIVE LAW JUDGE'S ORDER ON JANUARY 15, 1976, RESPONDENT HEREBY REQUESTS PERMISSION TO FILE A MEMORANDUM AND OTHER PAPERS IN SUPPORT OF ITS APPLICATION FOR REVIEW BY JANUARY 29, 1976. IN ADDITION, IN LIGHT OF THE IMPORTANCE OF THE ISSUES RAISED BY SUCH MOTION AND THE PROCEEDINGS TO WHICH IT RELATES, ORAL ARGUMENT IS ALSO REQUESTED.

PROSKAUER ROSE GOETZ AND MENDELSOHN
APPEARING SPECIALLY FOR AMREP CORP.
FOR PURPOSES OF THIS MOTION ONLY

BY: MORTON M. MANEKER

CC: PERRY W. WINSTON, ESQ.
FEDERAL TRADE COMMISSION
LOS ANGELES REGIONAL OFFICE
ROOM 13209
11000 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90024

WU TELTEX WSH
(1558)

ROPUT NYK
M

ITT World Communications Inc.

C 321—Affidavit of Service of Papers by Mail. Affirmation of Service by Mail on Reverse Side.

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United States Court of Appeals
For the Second Circuit

Index No. 76-6008
76-6013
76-1028

Amrep Corp, Appellant
v
Federal Trade Commission, Appellee ~~Plaintiff~~

~~Defendant~~

AFFIDAVIT OF SERVICE BY MAIL

United States of America,
v
Amrep Corporation, et.al.

~~Defendant~~

STATE OF NEW YORK, COUNTY OF New York ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at

35 Top O' the Ridge Dr. Scarsdale, New York 10583

That on February 2nd *1976 deponent served the annexed* Appendix

on ~~attorney(s) for~~ Barry Morris, Esq.
Office of the General Counsel
in this action at Federal Trade Commission Washington, D.C. 20580

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in ~~a post office~~ official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me

February 2nd, 1976

Philip Castellano Jr

PHILIP CASTELLANO JR.
NOTARY PUBLIC, State of New York

Andy Levitt

The name signed must be printed beneath

Sandy Levitt

BEST COPY AVAILABLE